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The American
Political Science Review

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THE JURISTIC THEORIES OF KRABBE

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The doctrines of H. Krabbe, professor of public law in the University of Leyden, are to be found in his *Die Lehre der Rechtessouveränität*, published in 1906, and his *Die moderne Staatsidee*,[1] the second edition of which appeared in 1919.

The political theory of Krabbe resembles that of Duguit in that it denies law-making power to the state, and recognizes law (as defined by himself) as the ruling power in human society, as sovereign, and, therefore, as above the state. However, as will presently be seen, Krabbe places the state upon a much higher plane than does Duguit. To Duguit, political rulership is nothing more than the bald fact that, in a given community certain persons, for some reason or other, possess and exercise, actual power of control over the actions of the other persons of a group. It is, as it were, an objective fact which cannot, and need not be, ethically justified. To Krabbe, upon the other hand, the state is, in essence, a community of persons unified by the general agreement of its members as to the valuation of public and private interests, and possessing organized instrumentalities for clarifying and formulating these common convictions, and, when necessary, enforcing them. To Krabbe, the state thus

[1] This second work has appeared in English dress under the title, "The Modern Idea of the State." The translators, Professors George H. Sabine and Walter J. Shepard, have increased the value of the volume by adding an extended and luminous note of introduction.

plays a necessary part in the declaration and enforcement of law, if not in investing it with essential validity as such.

We find, however, in Krabbe, and also in his translators, as will be later pointed out, that same mistaken idea which is to be discovered in Duguit, that an inquiry into the idealistic or utilitarian validity of law, as determined by its substantive provisions and the purposes sought to be achieved by its enforcement, has a relevancy to, and that its conclusions can affect, the validity and usefulness of the purely formalistic concepts which the positive or analytical jurist employs.

To Krabbe the creative source of law is the conviction of the people as to the rightfulness of the principles of conduct which the law prescribes. "Thus", he says, "not the will of a sovereign who exists only in the imagination, but the legal conviction of the people, lends binding force to positive law; positive law is valid, therefore, only by virtue of the fact that it incorporates principles of right."[2] Accordingly, Krabbe goes on to say: "We no longer live under the dominion of persons, either natural persons or fictitious legal persons, but under the dominion of norms, of spiritual forces. In this is revealed the modern idea of the State. . . . . Hence we no longer perceive the State as localized in a sovereign, but find it wherever we perceive the power of the law to create obligations. What is now in actual practice adorned with the old name of sovereign is a man or an assemblage of men upon whom the law has laid a task. They are not, therefore, invested with a power to be expressed, through their will, in independence of the law."[3]

"The theory of the sovereignty of law", he says in another place, ... "takes account only of that basis for authority which it finds in the spiritual life of man, and specifically in that part of this spiritual life which operates in us as a feeling or sense of right. The law which is in force, therefore, includes every general or special rule, whether written or unwritten, which springs from men's feeling or sense of right."[4]

[2] *The Modern Idea of the State*, p. 7.
[3] *Id.*, p. 8.
[4] *Id.*, p. 39.

A statute, says Krabbe, which is not supported by this sense of right is not law. "It must be recognized, therefore, that there may be provisions of positive law which lack real legal quality. The legislative organ runs the risk of enacting rules which lack the quality of law either because the organization of the legislature is defective or because it mistakes what the people's sense of right demands. On the other hand, it may happen even more easily that what is embodied in a statute ceases to be law and so is no longer valid because it has lost the basis of its binding force. In such a case compulsion—the punishment or legal judgment which disobedience to the statute entails—is irrelevant. Constraint is justified by the necessity of maintaining the law, but it can never bestow legal quality upon a rule which lacks it. Mere force, whether organized as in the State or unorganized as in an insurrection or revolution, can never give to a rule that *ethical* element which belongs essentially to a rule of law."[5]

Though Krabbe states so emphatically, and without qualification,that a statute or other formal command of the state is not valid if its contents are not in consonance with the convictions of right of the persons to whom they are directed, he does not clearly declare that the individual who deems that this test has not been met should, as a practical proposition, refuse obedience to it, or that, as an ethical proposition, he would be justified in so doing. One may, however, possibly infer that Krabbe asserts that the courts or executive organs of the government would be justified in refusing to apply or enforce statutes or other commands claiming to be law, whose contents do not conform to popular convictions of right. Or, possibly, his meaning is that the control of governments by the convictions of the people regarding what is right is an ideal end to be realized, as rapidly as possible, that, until this ideal is realized, and to the degree that it is not realized, existing governments and their systems of law are not ethically justified, without, however, going to the extent of declaring the essentially rebellious or insurrectionary doctrine that, from a legal as well as an ethical point of view, individuals

[5] *Id.*, pp. 47–48.

are justified in refusing to support such governments or obedience to their laws.

It is, however, clear that, according to Krabbe, a rule of law is essentially valid when springing from, and supported by, men's feelings of right, even though those feelings or convictions may be improper or erroneous when judged from the standpoint of abstract justice as determined by the ethical philosopher. For he says: "The sense of right as it actually reveals itself, with all its defects, is recognized as the original source of authority." In another place he says: "To a philosopher or to any outsider the law thus declared (by the people's sense of right) may not appear to be just. . . . . It is of course possible, owing to the influence of numerous factors both material and ideal, and because of an imperfect insight into the nature of the interests to be evaluated by law, that this sense of right may be different now from what it formerly was, just as it may vary in different individuals under the pressure of divergent experiences and interests. We have to deal with this more or less imperfect sense of right. Its activity produces rules and imparts to them the character of positive rules of law. . . . . Practice must content itself with a legal system whose rules are based upon a defective sense of right. . . . . If a higher justice is to be evolved, the legal instruction of the people must be undertaken."[6]

Krabbe then goes on to make the interesting assertion that the sense of right of only those individuals who are in a position to share in the spiritual life of the time is to be considered. And even as to these individuals, they may properly participate in determining and formulating this sense only as to interests about which they are qualified to form an intelligent judgment. "If they are required to decide upon the legal value of interests about which they have no knowledge, their minds are compelled to react upon phenomena from which they have experienced no effects. The exclusion of such persons from law-making cannot be taken as denying that the sense of right is the basis of law"[7]

[6] *Id.*, pp. 50–51.
[7] *Id.*, p. 51.

The theories of Rousseau, says Krabbe, first made it possible to view political authority other than as inhering in specific persons, but this had only the effect of placing legislative authority in the people—a conception which jurists have since developed to the extent of transferring this law-making power to the abstract state of their own conceptual creation. The further and necessary step which needs to be taken, says Krabbe, is to locate this ultimate and decisive law-creating power in the common conviction of the people as to what is right, and to view popular or representative assemblies as merely the mouthpieces through which the people's convictions find utterance. "The sole rulership of the law," he says, "emerges only where law-making rests exclusively in the hands of the popular assembly, since the popular assembly gets its significance from what it represents, namely, the nation's sense of right. It is therefore the bearer of that spiritual power from which is derived the rulership and the imperative nature of law."[8]

The explanation which Krabbe gives of the origin of, and ethical basis for, law would seem closely to resemble that of the historical school of jurists, especially as voiced by Savigny, according to whom law is a product of the national consciousness or spirit of a people. But there is, says Krabbe, this important difference between his own view and that of Savigny and his school. According to them, there exists, as it were, a superconsciousness or national spirit which finds expression in custom and a body of laws which are binding upon all the individuals of the community or nation. According to his own view, says Krabbe, there is no such superpersonal or national consciousness, and law is created, not by communal convictions, but by an identity or consonance of individual convictions or sentiments of right.

Krabbe's political and legal philosophy also undoubtedly exhibits some close resemblances to that of Rousseau. In result, it locates sovereignty in the governed rather than in a monarch or ruling class. It views governments as but instrumentalities for carrying out the popular will or judgment. It defends

[8] *Id.*, p. 34.

the right of majorities. It asserts that political or legal control cannot be ethically justified by reason solely of its source—that it must be justified, if justified at all, by the intrinsic merits of the substantive provisions of the commands that are enforced. But here the resemblances cease. Krabbe does not, as does Rousseau, start with the conception of men as endowed by their very nature with certain inalienable rights which the law must respect. His political philosophy is clearly a social rather than an individualistic one. Hence he sees no necessity for founding the social and political community upon a contract to which all the individual members are voluntary parties. Nor is he led by any other route to the acceptance of that absolute sovereignty of the state which Rousseau asserts—that sublimation of the individual will into the general will, that complete surrender of individual liberty which results from the contract according to which, to use Rousseau's words, "each of us puts his person and all his power in common under the supreme direction of the General Will; and, in our corporate capacity, we receive each member as an individual part of the whole."[9]

Though Krabbe, in his search for ethically valid principles of law, does not recognize that men, apart from social life, have inalienable rights or indestructible interests to which value should be attached, and which, therefore, should find recognition and embodiment in all systems of law, he nevertheless asserts that law derives its validity as to each individual from the fact that its provisions are in consonance with such individual's feeling or conviction of the rightfulness of the conduct which it prescribes.

This position makes it necessary for Krabbe to determine the validity of laws, in their application to those particular individuals who do not happen to agree with their fellow citizens as to the laws' rightfulness. Where there are such differences, says

[9] *Social Contract*, Bk. I, Chap. VI. Krabbe says: "If Rousseau's political theory had been regarded only in the light of its main principles and had not been criticized exclusively with reference to what he borrowed from earlier theories, viz., the explanation of the community and the establishment of its sovereignty by the social contract, there might have been seen in it, what it doubtless contains, the principle of the modern idea of the State" (p. 29).

Krabbe, the majority should govern. This right of the majority he defends upon the following grounds:

Law, he says, is a rule of a community, and the purposes of that community cannot be realized unless its rules are general in operation and not virtually contradictory. "Hence our sense of right attaches the highest value to having a single rule, and sacrifices, if necessary, a particular content which might otherwise be preferred."[10] The fact that a rule is accepted as right by a majority of the individuals of a community shows that it has a higher value than any contradictory rule. Even by those who prefer the contradictory rule, this fact is perceived. "Even according to their own sense of right, it is more important to have a single rule in the community to which they belong than to have the rule which they prefer. Consequently, for those whose convictions accord with the rule, the obligation to obey the customary rule rests upon the value of the *content* of the rule; for all others it is based upon the value of having the single rule."[11]

Krabbe holds so strictly to this majority principle that he will not admit the validity of provisions, even though embodied in written constitutions, which require more than a majority vote for the legitimization of particular state actions. "Such provisions have no legal value"; he declares, "they are not rules of law, and are not binding," because they prevent the operation of the simple majority principle. Rules thus retained, though opposed by a majority of the individuals of the community, may continue to be obeyed, but they are not really rules of law and therefore *ought* not to be obeyed.

This majority principle is also applied by Krabbe in determining the action of legislative or other collegiate political bodies. He emphasizes the fact that the representatives of the people should hold themselves bound by the known judgments of their electorates as to the rules of law to be adopted. So far as this is not known the representatives must, of course, act according to their own sense of right. The problem of political science is to perfect the organization of societies so that the sense of right

[10] *Id.*, p. 74.
[11] *Id.*, p. 75.

of the individuals may find modes of authentic expression and enforcement when so expressed. That, according to Krabbe, unwritten law, voicing the popular sense of right, may abrogate and modify statutory law, or even written constitutional provisions, goes without saying.

As can now be seen, Krabbe, though agreeing with Duguit as to the sovereignty of law rather than of the state, attaches to the state a greater importance than does Duguit. He does not regard the control exercised by state officials as a bald matter of fact, of superior power or force which neither can nor needs to be ethically justified.[12] Upon the contrary, he declares that political rulership is one of law—that it is essentially *legal* in character, and justified as such. The state exists, in other words, as a legal institution and has for its purpose the clarifying, and, when necessary, the enforcing of the rules of right which the people hold, whether or not, from the philosophic point of view, those rules are wholly just. "It may be admitted," he says, "that the positive law does not yet correspond to our ideal of it and that the sense of right which gave rise to it was defective; it may be admitted that the persons entrusted with law-making are not sufficiently impartial in their attitude toward social interests of a material, moral, religious, and intellectual kind. Still this does not alter the fact that the title of the rulers is a *legal* title founded upon positive law. This is the point which deserves all the emphasis."[13]

"A people is a State", says Krabbe, "because of the body of legal relations (*Rechtsleben*) existing in it. And one State differs from another State because of the particular standard of legal value applied in the valuation of interests."[14] It is barely pos-

[12] Duguit says: "La vérité est que la puissance politique est un fait qui n'a en soi aucun caractère de légitimité ou d'illégitimité." *Manuel de Droit Constitutionnel* (1907), p. 36.

[13] P. 207. Krabbe, furthermore, does not accept Duguit's doctrine of "solidarity" as an adequate basis for law. He says: "It cannot even be shown as yet that the law can be deduced from solidarity, for solidarity is an abstraction and cannot be recognized as an active principle unless it can be shown that the sense of right is inspired throughout by it."

[14] *Id.*, p. 209.

sible, he says, to imagine a state, thus defined, as existing without some organization of its body of legal relations, but in all civilized states there is this organization involving the existence and operation of governmental organs. These organs owe their origin and competence to the law, that is, to the sense of right of the people, and this decisive law-making power of the people is never vested in these organs or limited by their action, for, independently of these organized methods of law-making, the unorganized sense of right continues to operate legislatively, whether to annul the legality of the statutes or ordinances which these organs have declared, or to modify the constitutional provisions which provide for the existence and functioning of these organs themselves.

The doctrine which Krabbe declares with regard to law makes it easy for him to bridge the gap which analytical jurisprudence is compelled to recognize between municipal and international law, and to assert the possibility of a world state that will not do violence to the sovereignty of the state of analytical jurisprudence.

Just as national or municipal law springs from, and is created by, the sense of right felt by members of a given people or national group, so international law, says Krabbe, is born of a cosmopolitan conviction as to the principles that should be applied in the dealings of national states with one another. To the extent, then, to which international law exists, its validity is exactly the same as that of municipal law. "International law is distinguished from national law not in respect to its origin and foundation, but in respect to the extent of the community to which its commands apply. And the incomplete and less perfect character of international law does not lie in the fact that it rules over 'sovereign' States, and is therefore rooted in the defective organization of the sense of right which tends to regulate the community of civilized nations."[15]

Furthermore, to the extent that international law exists, that is, to the extent that there are cosmopolitan convictions regarding rules of right applicable to groups of individuals

[15] *Id.*, p. 236.

irrespective of national boundaries or affiliations, an international state already exists, and, with the development of its organized modes of declaring and executing these rules, the importance of this international state will increase until the now existing national states will find their proper places as parts or local organizations of the greater whole.

With regard to Krabbe's conception of the nature of international law, it is furthermore to be pointed out that, according to it, the subjects of international law are not the states, as held by the doctrine of orthodox international jurisprudence, but private individuals. It is their sense of right which creates and sustains it. Therefore, says Krabbe, it is unfortunate that the term "international law" should be employed. "There is no interposition of a hypothetical state authority. The name international law is really a misnomer. The name is suitable only to the theory which regards States as subjects of this law and which consequently regards it as a law *between* States. It would be better, therefore, to speak of a *Supernational Law*, since this expresses the idea that we are dealing with a law which regulates a community of men embracing several States and which possesses a correspondingly higher validity than that attaching to national law."[16]

Whether or not one accepts Professor Krabbe's philosophy of law and of the state, one cannot but agree with him as to the need which he urges that better provision should be made in the several states of the world for organs or instrumentalities by means of which the peoples of these states will be enabled to obtain a better knowledge of, and to express more clearly their convictions of right regarding, international interests. At present it is chiefly the legal conceptions of central governments that are influential, and, even as to them, it is the judgments of executive rather than of the more truly representative legislative organs that are decisive. "Only when the vital interests of the nation are at stake does the national [popular] sense of right exert a powerful influence, and when this happens the

[16] *Id.*, p. 245. Krabbe says: "What is usually called the law of nations is really international constitutional law" (p. 246).

government is frequently subject to pressure from convictions and conceptions which have been formed without a complete knowledge of the relationships. Consequently, one of the greatest defects in the making of international law lies precisely in the lack of an organization in the different States such as would insure the existence of a popular organ which, like the government [the executive], would be in constant touch with international interests. This might be either a special organ or the one already existing for law-making within the State. The sense of right represented by this organ, being supported by a knowledge of the interests concerned, could make itself effective in the field of international law. Such an organization is the first object to be striven for in the immediate future and pacivism ought to devote all its energy to this end."[17]

It has been seen that Krabbe definitely states that positive law owes its force as such to the consonance of its substantive provisions with the feelings or convictions of right held by the people to which its commands are addressed, and not to the fiat of the state which enforces it. And, therefore, he is obliged to hold that rules or commands issued by the legislative organs of a state the contents of which do not voice this popular conviction of right are not valid—are not, in fact, law, except in a formal sense. In truth, he appears to deny the quality of law to any such legislative products that have not been the utterances of governmental organs so constituted as to be able to express the ethical judgments of the governed. He nowhere, as has been said, expressly asserts, however, that commands of the state whose contents do not conform to the convictions of right of the majority of the persons to whom they are addressed and who are qualified to form such judgments should be disobeyed. If, then, Krabbe may be held to assert that such laws are valid in a formal sense, even if not intrinsically valid from an ethical point of view, his system becomes a purely ethical one; that is, his argument is addressed wholly to the matter of the ethical validity of the state's commands, and his conclusions, even if accepted, do not affect or invalidate the assump-

[17] *Id.*, p. 250.

tions of the analytical jurist. In short, it can be conceded that, ethically viewed, law, as an expression of the people's convictions of right, gains nothing, as to its validity, from the state, and as thus viewed is sovereign, and controls the state; and yet assert that, juristically viewed, that is, as *Juristisches Recht*, law is a creation of the state, an expression of its juristically sovereign will.

Krabbe asserts that the orthodox juristic theory, though predicating sovereignty or omnicompetence in the matter of law-making, nevertheless, and inconsistently with this fundamental premise, has, in fact, been forced to subordinate the state to its own law,—that this is involved in the conception of what has been termed the *Rechtsstaat*, according to which the state can act only in and through law, and also according to which all governmental agencies have their legal competences determined by law. Thus, after quoting the statement of Laband that "the State can require no performances and impose no restraint, can command its subjects in nothing and forbid them in nothing, except on the basis of a legal prescription," Krabbe says: "The modern idea of the State [i.e., his own idea] recognizes the impersonal authority of law as the ruling power. In this respect it accepts the standpoint of the theory of the legal State as this was formulated by Laband. But . . . . it no longer holds that the State subordinate itself to the law, but insists that the authority of the State is nothing other than the authority of law. Hence there is only one ruling power, the power of law. According to this view, the State is not coerced by law, but is rather endowed with the authority of law. The law is not a superior and the State a subordinate power, but the authority inherent in the State and the authority of the law are identical, so that the basis of the rulership of the State is coincident with the binding force of law."

In this statement of the orthodox juristic conception of the state as a *Rechtsstaat*, Krabbe is scarcely fair when he asserts that the state, according to the orthodox juristic view, is subordinated to law. The fact, of course, is that the jurist regards the state as the creator of all law which, as to itself, is deemed

to be legally valid. It has been earlier pointed out that a state may be regarded from a variety of points of view, and as thus variously regarded—sociologically, ethically, psychologically, or juristically—it may be differently defined and clothed with different essential attributes. When it is analyzed by the jurist solely from the legal point of view, it is necessarily considered as a *Rechtsstaat*, that is, as living and having its being in law and functioning solely through law. But surely this is not to conceive of the state as subordinated to law. In this respect is evidenced the failure of Krabbe to distinguish between the state, in which legal sovereignty inheres, and the governmental organs through which it operates. Laws, and especially constitutional laws, determine the competences of these organs, but they do not, and *ex hypothesi* cannot, control their creator, the state.

Krabbe's essential errors, then, would seem to be his failure to keep sufficiently sharp the distinction between ethical and legal validity, and his conviction, of which he does not appear to be able to rid himself, that when the jurist asserts the legal validity of a law there is implied a claim as to its ethicalvalidity, that is, as to the intrinsic worth of its substantive provisions.

Professors Sabine and Shepard in their Introduction seem to appreciate clearly enough the strictly limited field within which the analytical jurist confines the application of his concepts, for they correctly say: "The theory of sovereignty says nothing about the content of the command. The only question is whether it issues from a proper source: an imperative arising from an authoritative source is law." But then they immediately go on to declare: "The only question concerns the means by which a given will can be designated as authoritative. Accordingly theories of sovereignty differ only with reference to the method of determining the source from which imperatives may rightly issue. Or, to state the question somewhat differently, if law is the will of the State, how is the State given the right to express its will in commands binding upon its subjects?" Now, if by this it were intended to say that, in the case of every state, the analytical jurist is confronted with the constitutional or public law problem of determining the juristic origin of the

state, or of ascertaining the organs through which, or the legal processes by means of which, the state's legislative will may be authentically declared and enforced, no objection could be raised. But this is evidently not what is meant, for Professors Sabine and Shepard at once go on to discuss what they conceive to have been the unsuccessful attempted answers to the questions which they have stated; namely, the theories of divine right, of political contract, etc. Thus, from a matter of formalistic juristic envisagement the leap is made to the question of the ethical basis upon which political authority may be justified.

Confusion of ethical and formal legalistic conceptions of the validity of the law recognized by the state is still more evident in the section of the translators' Introduction in which they discuss "The Authority of Law".[18] They say: "We have argued that the law deals with the manifold human interests which exist within a community, that it represents a system of relatively stable judgments of value concerning these interests and that its end is to safeguard as wide a range of interests as possible, due regard being given not only to the number of interests but to their intrinsic importance. If this be correct, it is obviously meaningless to ask further why law in general has authority. It has authority because of its very nature. . . . . Like any other problem the evaluation of interests is settled when it is settled correctly. In other words, the correctness of the solution cannot be judged according to its content, that is, according to the correctness of its practical success in making effective the valuation it expresses. It is clear, therefore, why this conception of law gives a radically different view of authority from that implicit in the doctrine of sovereignty. The latter is purely a formal conception of authority. The law is authoritative because of the source whence it comes. It is the voice of a super-person, either of an individual in some way designated as a superior, or the collective person or State. This view neglects the fact that, as an evaluation of interests, a law has to demonstrate its correctness in a way fundamentally like that by which any other decision is justified. Verification is

[18] Pp. lxx *et seq.*

in terms of content and not of form. To urge formal correctness exclusively is nothing but a way of withdrawing a favored solution from criticism."

It has been worth while to make this extended quotation because it states so clearly the distinction between the jurist's conception of validity and that of the moralist. At the same time, it is to be observed that it is unfair to the jurist, in so far as it seems to imply that he sets up his conception as a substitute for that of the moralist, or, at any rate, as a device for escaping from the necessity of meeting the ethical problem. Of course neither of these implications is true. The jurist does not claim that his doctrine of legality is an alternative to that of the moralist; it has a wholly different purpose, and, therefore, it is not an attempt to avoid the problem as to ethical justification of law in general or of special laws in particular. It simply leaves that question unconsidered, and, accordingly, one which the moralist may freely solve as seems to him right.

AMERICAN INTERPRETATIONS OF NATURAL LAW

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When James Otis in 1764 declared that government "has an everlasting foundation in the unchangeable will of God, the author of nature, whose laws never vary," and that "there can be no prescription old enough to supersede the law of nature and the grant of God Almighty, who has given to all men a natural right to be free,"[1] he was at once making use of one of the oldest and most important conceptions in the history of political thought and giving to that concept a distinctly American meaning.[2] His was merely one of the earliest examples in this country of a kind of political theory which was to find reflection in the Declaration of Independence in one generation, in the higher law doctrine in another, and in a famous trilogy of decisions of the Supreme Court in still a third.[3] However, the natural-rights theory is by no means the only usage found for the natural-law concept in the political thought of this country, and it is the purpose of this paper to trace briefly the various interpretations placed upon it and the different forms through which it has passed.

It is easy enough to say that natural law has meant just what the individual theorist desired to have it mean; for its content has varied from philosophical anarchy to paternalistic aristocracy, and from the assertion of strongly individualistic democracy to the defence of highly centralized government. But this statement does not dispose of the problem. It is necessary to know why and

[1] *The Rights of the British Colonies Asserted and Proved*, 11, 16.

[2] Although the theory of the natural rights of the individual was used by the Sophists, it is an interpretation of the natural-law concept which was otherwise used practically not at all until the period of the civil wars in seventeenth century England. The best examples of such usage are contained in Locke's second *Treatise* and Blackstone's *Commentaries*.

[3] The cases referred to are Lochner v. New York (1904), Adair v. U. S. (1907), and Coppage v. Kansas (1914).

when these varying interpretations were advanced and what their exponents meant when they spoke so confidently of the laws of nature.

II

First of all, it is to be pointed out that, excepting for seventeenth century New England, very little is heard of natural law in America until after the beginning of the opposition to the regulative measures of the British Parliament in 1763. In fact there seems to have been almost no theorizing about government in any of the colonies before that time; important political and constitutional development there was, but the theory of the times must be learned from what is implicit in institutional history rather than what is explicit in writings on political philosophy. In New England, however, there is to be found, at least in the earlier years of the colonies, a highly developed and greatly relied upon theory of divine law. That this idea of a supreme law of God is of the same species as the theory of a law of nature is attested not only by the medieval identification of natural and divine law but also by the way in which it was used in these colonies. The Mayflower Compact, the Fundamental Orders of Connecticut, and the Fundamental Articles of New Haven assert the idea of a divine basis and function of civil government, while such laws as those of the famous Massachusetts Body of Liberties demonstrate the reliance of the colonists upon their interpretation of the law of God rather than upon the common law of England.[4]

But it is not so much the earlier colonial ideas of a supreme law of God as it is the example of Continental and English writers that prepared the way for later American theories of natural law. In the seventeenth and eighteenth centuries natural law was one of the great branches of learning in Europe, and the works of Grotius, Pufendorf, Vattel, and Burlamaqui were very well known in America.[5] Perhaps even more important for the political

[4] This subject is best discussed in Reinsch, *English Common Law in the Early American Colonies*, and in Merriam, *History of American Political Theories*, Chap. I.

[5] When John Adams was beginning his study of law in 1758, Jeremiah Gridley, leader of the Boston bar, told him that the difficulties of the lawyer in this country

thought of the Revolutionary period were the ideas of rights secured to individuals as against the power of the government which were developed in England during the struggles of the seventeenth century and expressed in classic form in the writings of Locke and Blackstone. Nor can we afford to disregard the significance of the deistic emphasis upon nature as the all-important concept in philosophy and theology.[6] In a region where men read Pope, Bolingbroke, Hume, and simplified versions of the physical and metaphysical works of Newton and Locke, it is only to be expected that they should be imbued with theories of a supreme law of nature, developed, to be sure, in speculations theological, physical, and epistemological, but just as applicable to those political when the need arose.

And so when the dispute between the mother country and her American colonies came to a head over the question of the power of Parliament to regulate and to tax the subjects of the king who had settled in the dominions beyond the seas, the colonists who had read the orations of Cicero, the writings of Grotius and Vattel, Pufendorf and Burlamaqui, Locke and Blackstone, who had listened to sermons upon the supremacy of the laws of God, or had perused the arguments of the deists, found in such philosophy controversial weapons suited to their needs.

For twelve years the theory of natural law expressed by James Otis in 1764 was that generally accepted by the colonial pamphleteers and speakers. Contrary to the general notion of the subject, the pre-Revolutionary argument of rights derived from nature is never one from natural law alone; always it is declared that there are certain natural rights which are guaranteed by the British constitution, or, as Samuel Adams put it: "The rights

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were greater than in England, for here he must study not only the common law but also "civil law, and natural law and admiralty law. . . . ." *Works*, II, 46. A glance at the citations in the writings of men like Adams and James Wilson will demonstrate their indebtedness to the European theorists of what some have termed the school of natural law.

[6] Riley, *American Thought*, 2nd ed., 1–2. See also Becker, *The Declaration of Independence*, Chap. II. I am inclined to believe that Professor Becker overestimates the influence of the philosophical and scientific movements and neglects the importance of political and legal writers, especially Blackstone.

of Nature are happily interwoven in the British Constitution—It is its Glory that it is copyd from Nature."[7] In his "Dissertation on the Canon and Feudal Law" John Adams declared that if the rulers of the mother country would endear the colonies to her they must "become attentive to the grounds and principles of government, ecclesiastical and civil. Let us study the law of nature; search into the spirit of the British constitution; read the histories of ancient ages; contemplate the great examples of Greece and Rome; set before us the conduct of our own British ancestors, who have defended for us the inherent rights of mankind against foreign and domestic tyrants and usurpers, against arbitrary Kings and cruel priests, in short against the gates of earth and hell."[8]

Other examples of this type of theory are too well known to require special attention.[9] For present purposes it is sufficient to point out that although the theory of the natural rights of man was the most important political conception of the time it was also, to a degree, a theory of the British constitutional system.[10] But this was not to be the final step in the development of the theory of natural law during the Revolution. Strangely enough, it remained for an Englishman but newly arrived in the land to give the first effective expression to a theory of rights as resting solely upon the authority of nature. Tom Paine it was who, on hearing of the proud boast of Franklin, "Where liberty is, there is my country," capped it with one yet more magnificent, "Where liberty is not, there is mine." His interest was in the rights of man as man, not as a citizen of this or that country, and his appeal in the extremely influential "Common Sense" was to those *rights of mankind* which exist independently of charters or constitutions.[11]

[7] *Writings*, I, 47.

[8] *Works*, III, 462. See also his Novanglus and Clarendon letters.

[9] Of particular importance are the pamphlets of Jefferson, Hamilton, and Wilson.

[10] On this subject see C. H. McIlwain, *The American Revolution*, and R. G. Adams, *Political Ideas of the American Revolution*.

[11] *Writings*, Conway ed., I, *passim*.

Two states, New Hampshire and South Carolina, adopted constitutions before the Congressional resolution of May 15, 1776, but since the instruments were intended to be neither permanent nor revolutionary no reference to the rights of individuals is to be found in them. The first state to adopt a constitution after that date was Virginia, and with the inclusion of the purest natural-rights theory in its prefatory Declaration of Rights and in the Declaration of Independence it became evident that the American theory of natural rights was no longer an integral part of the American interpretation of the British constitution. It is not necessary to dwell upon the extent to which this philosophy of government was accepted at the time; the recorded debates, the pamphlet literature, and the state bills of rights speak for themselves.[12]

The period of the two decades following 1763 was one of political revolt, and therefore one in which the basic problems of political theory were in question. Few ages in the world's history have witnessed an equal outburst of theoretical discussion dealing with the nature and functions of political society. Desiring to justify their claims for certain rights, the Americans naturally turned to the theory best suited to their purpose, a negative rather than a positive one, i.e., one placing emphasis upon the things which government may not do rather than one dealing with the construction of political institutions. But by 1787 their condition and their philosophical needs had changed. With independence a fact, with no acts of Parliament against which to declaim, with the general acceptance of the theory and practice of republican government, the problem had become that of making more workable their own government rather than of protesting against acts of tyranny. However, in spite of the fact that the Philadelphia convention had not the task of framing a theoretical protest but that of shaping a superstructure upon a

[12] The lack of a bill of rights in the proposed Massachusetts constitution of 1787 led to the preparation of a document which deserves a more prominent place in American political theory than it has been accorded. I refer to the "Essex Result" written by Theophilus Parsons, later chief justice of his state, and adopted by a group of voters of Essex County. It may be found in T. Parsons' *Memoir* of his father.

generally accepted foundation, and in spite of the very conservative character of its membership, the natural-law theory seems never to have been questioned during its meetings. References to the concept are fairly frequent, but of relatively little importance, and in no case do they represent any further development of the views which had become commonplaces of the time.[13]

If the natural-law philosophy had no very important relation to the discussion of the details of government which occupied the attention of the convention, it was made to have a large and a significant part in the controversy over ratification. In hundreds of speeches and pamphlets, men like Gerry of Massachusetts, Martin of Maryland, Mason and Henry of Virginia, Lansing, Yates, and Williams of New York, asserted that the natural rights of the people and of the states were in danger even as they had been in 1775. These rights, but recently won from Britain at the cost of a revolution in which many had lost their lives and their fortunes, were to be sacrificed to the desire on the part of the aristocracy for a government in which a few men would have an unlimited power.[14] Many of the Anti-Federalists undoubtedly were far more concerned about the powers of the states than about the rights of individuals, but they nevertheless found it expedient to place a very great emphasis upon the theory of natural rights.[15] Others of this party seem to have been honestly concerned for the inherent rights of man, rights for whose protection the proposed constitution made no provision.[16]

The fact that the Anti-Federalists attacked the proposed constitution with the weapon of natural rights did not prevent the Federalists from defending it with precisely the same instrument.

[13] See M. Farrand (ed.), *Records of the Federal Convention*, I, 49, 134, 147, 324, 437, 440; II, 56, 119, 124, 137, 222.

[14] The more important speeches and writings are collected in Elliot's *Debates* and Ford's *Pamphlets* and *Essays*.

[15] Particularly is this true of Gerry and Martin. It is interesting to compare the much-quoted statement in the opening days of the convention that "The Evils we experience flow from the excess of democracy," with campaign uses of extreme natural-rights theories.

[16] This applies especially to George Mason of Virginia. See also the opinion of Jefferson as expressed in his letters of the time. *Writings* (Ford's ed.), IV, 2, 4, 5, 8 *et seq.*

We may have serious doubts about the sincerity with which certain of them used the concept, but, from the point of view of the strict natural-law argument, theirs is the more logical of the two. For, when the Anti-Federalists contended that there are certain rights of man which are natural and inalienable, they had but to reply that they were heartily convinced of the truth of such doctrine and that they believed such rights to be so natural and so inalienable that provisions for their recognition in man-made constitutions would be superfluous. This line of defense was worked out by James Wilson and expressed in final form by Hamilton in the eighty-fourth number of the "Federalist." They argue that a bill of rights would even be dangerous, since it could not set forth all natural rights and would therefore afford a pretext to claim more power than the document was intended to grant. So ardent a believer in the natural-rights theory as John Dickinson contended that a bill of rights could have no proper place in a federal constitution,[17] and Benjamin Rush went so far as to say: "I consider it as an honor to the late convention, that this system has not been disgraced with a bill of rights. Would it not be absurd to frame a formal declaration that our natural rights are acquired from ourselves?"[18]

The result of the attacks upon the constitution is to be seen in the amendments proposed by seven of the ratifying states, in the twelve amendments submitted to the states by Congress, and in the ten amendments ratified by them and thereafter composing the federal "bill of rights."

In the history of American political thought the period of Federalist supremacy is not fruitful of new developments; old theories are generally accepted in the form developed during the preceding struggles or in but slightly modified form. That is not to say, however, that political theory was entirely neglected; nor is it true, as has frequently been assumed, that the concept of

[17] See his *Letters of Fabius*, 1787. In the edition of 1797 he points with pride to the resemblance between the theory of these letters and Paine's *Rights of Man*.

[18] Given in McMaster and Stone, *Pennsylvania and the Federal Constitution*, 295. The most amusing, if not the most profound, arguments of the campaign are to be found in H. H. Brackenbridge, *Cursory Remarks*. This ironical essay is reprinted in Ford's *Essays*.

natural law was discarded. On the contrary, it formed an important part of every work on political theory written during these years. John Adams, for example, although he was engaged in defending American constitutions rather than in remonstrating against acts of Parliament, continued to hold that the theory of the rights of man is the only sound basis for government. As in his earlier political writings, he ascertains the principles of natural law from an historical survey of institutions as well as from deductions of pure reason. Thus his lengthy examination of the rise and fall of governments seems to him to lead to the conclusion that "three branches of power have an unalterable foundation in nature; that they exist in every society natural and artificial; and that if all of them are not acknowledged in any constitution of government, it will be found to be imperfect, unstable, and soon enslaved. . . . ."[19] His theory of a natural aristocracy, a theory which he believes to be thoroughly in keeping with the rights of man, is also based upon his interpretation of the laws of nature.[20]

Although Jefferson never prepared a systematic study of politics, it is evident that his letters and speeches of this period, as well as his draft of the Kentucky Resolutions, are thoroughly in sympathy with the teachings of his friends, Thomas Paine, Joseph Priestley, and Joel Barlow.[21] That is, he continues to espouse the revolutionary natural-rights philosophy. And in the writings of Barlow himself we find a more or less systematic expression of the extreme natural-rights dogma compounded from the already traditional American theory of government, the ideas of the French Revolution, and the writings of Paine.[22] Unlike many Americans of his time, he holds that the laws of nature, which form the only true basis of government, are not to be derived from the teachings of the Bible or the church but from reason aided by the moral sense. Even those who, like John Quincy Adams, disagreed with the theories of Paine were very

[19] *Works*, IV, 579, 292 ff. Cf. Merriam, *op. cit.*, 125.
[20] *Ibid.*, VI, 232, 234, 271, 275, 397, 458.
[21] *Writings* (Ford's ed.), V, 147, 329; VI, 87, 88, 102, 517; VII, 172, 406.
[22] *Political Writings*, especially the *Advice to the Privileged Orders*.

careful to point out that they were attacking "The Rights of Man," but not the rights of man, not the basic premise of Paine's book but the conclusion which he infers from "unquestionable principles." The younger Adams, for example, contends that Paine would make the rights of the majority alone inalienable; he would neglect alike the natural rights of the minority and those "immutable laws of justice and of morality" which are paramount to all human legislation.[23] In other words, Adams holds that the principles of natural rights, as well as the broader rules of natural law, serve a conservative as well as a revolutionary purpose. Both restrict the will of the majority of the people.

Among the most interesting of all the political writings of the period are those of James Wilson and Nathaniel Chipman. Both conservatives, both lawyers, they are nevertheless among the foremost exponents of natural-law theory that this country has produced; and this in spite of the fact that they are systematic rather than controversial writers. Not Grotius or Vattel or Burlamaqui is more careful to analyze the natural-law concept than Wilson.[24] Nor do any of them assign to it a greater place in the laws by which we live. He disagrees with Blackstone, who had said that law involves a command of a superior to an inferior, because such a statement is consistent neither with the omnipotence of the Divinity in the sphere of legislation nor with the natural and perfect equality of all men.[25] He is even more unlike Blackstone in that his treatment of natural law is no mere preliminary obeisance to current doctrines. One has but to look over the chapters on international and private law to find that he carries his theories of nature into that part of his writings. The book of Chipman is more concerned with politics than with law, but the point of view is substantially the same.[26] Perhaps the most striking thing about these two systems of theory is that both hold that natural law is progressive, Wilson on the ground that as men progress in knowledge and virtue they become capable

[23] *Letters of Publicola*, in his *Writings*, I, 69, 77, 78, 80, 83, 94, 98.
[24] *Lectures on Law*, *Works* (1804 ed.), especially Vol. I.
[25] *Ibid.*, I, 108.
[26] *Sketches of the Principles of Government* (1793).

of recognizing and following higher standards, Chipman on the ground that although the rules of nature are immutable they do not apply alike to all circumstances, different principles coming into force as the relations which the laws of nature govern undergo change. He also argues that since the American constitution alone provides for amendment it is the only one based upon true principles of natural law.

III

Whereas there is no important political theorist before 1800 whose works fail to give evidence of belief in and reliance upon the natural-law concept in one of its forms, after that date the tendency, with the exception of the theory of the slavery controversy, is increasingly toward discarding it. Aside from the line of cleavage marked by the Civil War and the necessity of considering separately the ideas used in the struggle over slavery, the material containing the political thought of the century is exceedingly difficult of classification. Being a period of transition, and one in which many as yet uncharted forces were at work, the strands of a developing political thought are more evident in the finished product than in the making. The men of these years were not at all thoughtful of the problems they were creating for future scholars. Particularly is this true of those engaged in public affairs, for they seem to see no rational relation between their political ideas and the concept of natural law. This is foreshadowed by the scant attention paid to it by Jefferson as soon as he ceased to be the leader of the opposition. Furthermore, he seems to be coming over to the interpretation of the Adamses, for, in his inaugural address, although he affirms his belief in the natural rights of the people and the sacred principle of majority rule, he also states that "that will [the will of the majority] to be rightful must be reasonable; that the Minority possess equal rights, which equal laws must protect, and to violate would be oppression."[27] A logical theory of majority rule, such as he had previously espoused, can have no place for such limiting qualifications, yet not only does he begin to find that

[27] *Writings* (Ford's ed.), VIII, 2.

the rules of nature are regulatory as well as limiting but he also writes to John Adams that he is in agreement with the latter's contention that there is a natural aristocracy among men, and indeed he goes one step beyond Adams in urging that these natural *aristoi* should be elected to all of the offices of government and not merely to the upper house of the legislature.[28]

Nor do more extreme democrats of the type of Jackson and Lincoln find it necessary to bolster up their faith in government of and by the people by references to natural law, for their use of the theory is both slight and unimportant.[29] Clay seems not to have had the concept in his political vocabulary, and Webster, although he stood most stoutly for the inalienable rights of property, managed to make speeches on the Declaration of Independence without once referring to the natural rights of man.[30] Only John Quincy Adams, last of the old line of statesmen in more ways than one, found an important place in his writings for the theory of the laws of nature. Not only does he contend that the first principles of natural right prohibit the lodgment of absolute power in any government,[31] but he also asserts the view that it is the whole people of the nation, and not those of any particular state, who have such rights. The Declaration of Independence was the act of a single people and not of thirteen peoples; the natural rights of which it speaks are those of the country as a unit.[32] Jefferson Davis, on the other hand, holds that that document had as its basic principle the theory that ultimate rights inhere in each community, and this, he says, is recognized in the secession of eleven states from the United States of the Confederation in order to establish a new government—a step contrary to the law of the then existing constitution but in

[28] *Ibid.*, IX, 425.

[29] In Jackson's first inaugural address there is a casual reference to the rights of man, and in his nullification message and proclamation he asserts his belief in the right of revolution when undertaken by the people of the whole state. *Messages* (1837 ed.), 37, 193, 230, 231. Lincoln's profound belief in the rights of the people certainly did not lead him to place any emphasis upon the "natural" rights of man.

[30] *Works* (4th ed.), II, 46; IV, 375. But cf. *ibid.*, IV, 500–522.

[31] Oration at Quincy, July 4, 1831.

[32] Speech at New York, April 30, 1839.

accordance with the principles of natural law as set forth in the Declaration of Independence.[33]

The use of theory of natural law in the development of American public and private law is an extensive subject in itself and cannot be taken up here.[34] However, it seems appropriate to refer to the very important part played by this theory in the legal writings and the court decisions of the times. In the opinions of men like Marshall, Kent, and Story, as well as in their formal treatises, the influence of natural-law ideas is apparent. Many of the teachings of the earlier natural-law school continued to be in the ascendant during this most important period of American legal history; and the influence of the introductory part of Blackstone's "Commentaries" continued long after separation from England had been attained.

There have been those who, over-ardent in the belief that only the frontier can furnish an interpretation of American political thought, have held that the theory of natural law was taken to be the corner stone of democracy by the westerners of the time.[35] About the only proof of this that has so far been offered is the democratic nature of the constitutions adopted in that section. But a government may be ever so democratic and a bill of rights ever so inclusive and yet no more importance be attached to the theory of laws or rights of nature than is the case in the writings of Jackson or Lincoln. The people themselves may be sufficient justification for popular government, and bills of rights are easily copied when that is the thing to do. If we are to believe the evidence furnished by the published debates of the state constitutional conventions, it was in the East, not on the frontier, that most use was made of natural-law ideas. The best examples

[33] *Letters, Speeches and Papers*, VIII, 307; also IV, 355, V, 49, 391.

[34] The best treatment of this subject is found in C. G. Haines, *The Law of Nature in State and Federal Decisions*, 25 *Yale Law Journal*, 617. One of the earliest and most widely used digests of American law contains a characteristic acceptance of such theory: "The civil state enforces this law of nature that binds men to regard the rights of others; . . . the civil laws of a state are those of nature modified and perfected in a manner suitable to it, and to the advantages of society; . . . . the commands of the sovereign manifestly against the law of God, natural or revealed, are not to be obeyed." N. Dane, *Digest of American Law*, VI, 626.

of all are to be found in the convention of 1820–21 in Massachusetts and that of 1829–30 in Virginia. In Massachusetts both the conservatives and their opponents employ this philosophical weapon, and the speech of Story in favor of the rights of property is one of the most important of the period so far as concerns the theory of natural law.[36] In Virginia, on the contrary, we find the conservatives supporting their case on the basis of political expediency; while those advocating more liberal suffrage and apportionment provisions urge the necessity of following the immutable principles of natural law, particularly as they were set forth in the Virginia Declaration of Rights and the Declaration of Independence.[37] No debate with which I am familiar throws more light upon the basic meaning of the concept of natural law than does this one in Virginia.

In the many systematic political writings of the time there is the greatest possible diversity concerning the concept of natural law. Some authors, like Chipman, Hurlbut, Lieber, and Gerrit Smith, retain almost unchanged the traditional American theory that the basis of all laws and of all rights is to be found in the immutable truths taught by nature and to be learned by men through the use of reason, conscience, and the revealed word of God.[38] Others, like Calhoun, Brownson, Fitzhugh, and Hildreth, discard the idea that there are certain inalienable rights derived from nature, although in every case holding that there are basic laws or principles which underlie all government and all of the social and economic relationships of men. Of particular interest is the theory of the Roman Catholic Brownson that these laws can be learned only by and through the Church,[39] and the view of the capitalistic communist of Virginia that they are ascertained,

[35] Cf. Paxson, *History of the American Frontier*, 100–101.

[36] *Debates*, especially 83 ff., 122–136.

[37] *Debates, passim.* The speeches of Upshur and Leigh for the conservatives and of Campbell, Cooke, and Mercer for the radicals are particularly significant.

[38] Brief descriptions of the theories of these writers are to be found in Merriam, *History of American Political Theories.* It should be mentioned here that Lieber is placed in the natural-law group on the basis of his *Manual of Political Ethics*, for in his later *Civil Liberty and Self Government* the concept is not referred to.

[39] *Works*, XV, 347–48, 397, XVII, 9–12.

not by the use of reason as such, but rather from the lessons of experience.[40] In only one case does there appear to be a thorough and philosophical repudiation of the whole natural-law theory. Writing in 1826, six years before the appearance of "The Province of Jurisprudence Determined," Thomas Cooper employs a more than Austinian concept of law to prove that natural law has no existence.[41] In the controversy that is as old as the history of law, he represents those who think of law in terms of enactment rather than in terms of principles of right and justice, principles which, for all their merit, lack the official sanction of political authority.

A theory that deals with law only in terms of enactment may be quite satisfactory to those who are content to confine their discussions of politics to the details of arrangement upon a previously accepted basis; it offers no aid or comfort to men who, like the opponents of the institution of slavery, desire to secure the acknowledgment of a theory of freedom which does not find recognition in the laws of the land. Not all of the arguments on either side of the slavery controversy were based upon the theory of a law superior to those of man's making, but it is certainly true that if the argument from natural law were taken from the theories advanced by either party comparatively little would be left. In some measure at least is it true that the history of the anti-slavery movement, considered from the point of view of political theory, is the gradual acceptance by a large part of the North of the theory expounded by Garrison and his followers in the early thirties. Unpopular as the abolitionist's theories then were, the decades which followed saw their gradual diffusion throughout the non-slaveholding parts of the country, and this meant a temporary renaissance of the theory of natural and divine law. Even those who opposed the teachings and tactics of the extremists declared that slavery violated the natural rights of man as set forth in the Declaration of Independence. The

[40] See Wright, "George Fitzhugh on the Failure of Liberty," *Southwestern Political and Social Science Quarterly*, VI, 219.

[41] *Lectures on the Principles of Political Economy*, 53–54. Austin recognized the existence of natural law as "divine positive law," to be ascertained through revelation or the application of the principle of utility. Cooper made no similar concessions.

more philosophical of them tended to agree with the very able "Essays on Slavery" of William Ellery Channing, wherein it is contended that the God-given moral nature of man necessitates freedom both of body and of mind, and that slavery is not a question of expediency or economic advantage but of moral and natural right. Few there were among the opponents of slavery who were very philosophical about their arguments, but there were thousands who could declaim against it on the grounds that it infringed the laws of God. And it was but a step from doctrines of this sort to the philosophical anarchy of the "higher law" theory. This theory is usually linked with the famous speech of Seward on the eleventh of March, 1850, but Seward was a politician who was sufficiently aware that he was playing with dynamite to keep his ideas vague and even contradictory.[42] Rather was it the abolitionists and men like Hosmer and Thoreau who carried this doctrine to the logical extreme of disobedience based upon the natural right of the individual to interpret the higher law for himself and to refuse to comply with any man-made rule in contradiction to it.[43]

If the anti-slavery men made extensive use of the concept of natural law in their attacks upon that institution, so those favoring its retention employed their own interpretation of that supreme law in its defence. A few of them, like Paulding and Bledsoe, even declared that the practice of slavery was entirely in keeping with the principle of natural rights.[44] The ordinary argument, however, is that by the laws of nature and nature's God men are divided into ruling and serving classes.[45] It is therefore both idle and dangerous to attempt to make equal those who are by the highest of laws unequal. "That much lauded but nowhere accredited dogma of Mr. Jefferson, that 'all men are born equal' "[46] gives way to a theory of the natural inequality of man. In other words, the men of the South found it necessary

[42] *Works*, I, 66 ff.

[43] In *The Higher Law* and *Civil Disobedience* respectively.

[44] In *Slavery in the United States* and *An Essay on Liberty and Slavery* respectively.

[45] Especially important are the writings of Calhoun and those by Harper, Hammond, Simms, and Dew in *The Pro-Slavery Argument*.

[46] Hammond, in *The Pro-Slavery Argument*, 109.

to correct certain traditional views concerning the rights of individuals, and to discard a considerable part of the Virginia Declaration of Rights and the Declaration of Independence; but they clung just as firmly as did their ancestors in 1776 to their own interpretation of the laws of nature and of God. Aristotle and St. Augustine supplanted Locke and Blackstone, but arguments from expediency did not supplant those from the principles of eternal law.

IV

The end of the Civil War marks a definite turning point, if, indeed, it does not mark at least a temporary stopping point, in the history of American political theory. For political theory seems to flourish only when one or more of the bases of the political order are questioned; and since the passage of the Reconstruction amendments we have been too absorbed in expansion and prosperity seriously to question the substantial rightness of American institutions. We have dealt much in political science, almost not at all in meaningful political philosophy. However, in spite of the extent to which professional political scientists of recent times have frowned upon the natural-law doctrine, there have been a few examples of its use.

First come those writings which may well be called hold-overs from old ways of thought. Most characteristic of this group are Cooley's "Constitutional Limitations" and Woolsey's "Political Science" In both of these the individualistic natural-rights theory developed nearly a century earlier is accepted without question and without any substantial change, and is, moreover, really relied upon as a basic part of the legal and political systems presented in them. In certain lesser writings on politics which seem to fall under this classification the theory of natural law is dealt with so vaguely as to impart an air of unreality reminding one of the famous Cheshire Cat's smile, which, it will be remembered, continued long after the cat itself had faded away.[47]

[47] E.g., M. F. Morris, *History of the Development of Constitutional and Civil Liberty;* L. Abbott, *The Rights of Man;* J. M. Beck, *The Constitution of the United States;* F. Exline, *Politics.*

Of far greater importance is the use of theories of natural law in judicial decisions on public law during this period.[48] Probably the most important developments in American constitutional law since the reign of John Marshall fall within the categories "due process of law" and "liberty of contract." As I have before pointed out, these are theories of right, not of utility.[49] Furthermore, they represent the application of old theories of natural law, and particularly of natural rights, to problems never dreamed of by the founding fathers. And yet for all of the change in application, and for all the differences of terminology which from time to time appear, the basic idea is identical with the philosophy underlying many of the decisions and much of the juristic writing of the period of Marshall, Kent, and Story.

A second group of writers who have made some use of the theory of natural law includes those who have been influenced by post-Darwinian developments in the natural sciences. Woodrow Wilson, in "The State," presents an unthinking and rather confused version of the theory of Huxley, a theory that has little relation to the problems with which he is dealing. After once having quoted Huxley to the effect that the laws of nature are "only our way of stating as much as we have made out of that order," he finds no more use for the concept, Professor Giddings, more directly influenced by the evolutionary hypothesis, says that, although the old idea of natural rights has gone to the limbo of outworn creeds, there is a new theory of natural rights which is based upon principles that are "in harmony with the conditions of existence . . . . natural rights are socially necessary norms of right, enforced by natural selection in the sphere of social relations and in the long run there can be neither legal nor moral rights that are not grounded in natural rights as thus defined."[50]

The third and last group is composed of just one man. Professor F. M. Taylor enjoys the unique distinction of being the only writer in the last half-century to enter a real defense of the

[48] Haines, *op. cit.*

[49] In *Southwestern Political and Social Science Quarterly*, IV, 202.

[50] *Principles of Sociology*, 418–419.

concept of natural law in the realm of political theory.[51] Although his was a very thoughtful piece of work, it seems to have attracted little attention at the time and long since to have gone the way of theories which are unrelated to the speculative fashion of the day.

V

It is hoped that even so summary a survey of the history of American theories of natural law as this makes it evident that that concept has been given many meanings and applications. Almost may it be said that there is no usage of natural law in the whole of political thought for which American thought does not offer a close parallel.

In general it may be affirmed that the differences of meaning and of content are traceable to three causes: changes in philosophical or intellectual standards, the varying types of theorists who found a use for natural-law concepts, and the differing causes in which these concepts have been invoked. It is hardly to be expected that the same meaning would be attached to "nature" by Cotton Mather and Tom Paine or by William Lloyd Garrison and John C. Calhoun. Their problem, their environment, and their basic philosophy differ too widely to permit of their having in mind the same idea when they appealed to the immutable laws of nature. So is it true that although all of those who have used the theory—revolutionary leaders, religious teachers, conservative statesmen and judges, defenders of the old order in the South, closet philosophers—have proclaimed their interpretation of nature to be as everlasting as nature itself, very few of them agree one with another. It seems, then, if we are to find out what natural law has meant to American political theorists we must separate the general question into its constituent parts and endeavor to ascertain the meaning of "natural", of natural "law", and the content of "natural law".

Of these queries the most difficult is the first, particularly in view of the fact that most of those who have talked about natural

[51] *The Law of Nature*, Annals, I, 558. An able defense of natural law as a juristic concept is M. R. Cohen, "Jus Naturale Redivivum," *Philosophical Review*, XXV, 761.

laws have themselves had no clear notion of just what they meant by the term. This is, of course, a common characteristic of all forms of social and political theory: it is much easier to employ general terms without defining them than to hunt for precise words and make nice qualifications, and usually more effective.[52] When it was the vogue to speak and write of the laws of nature very few stopped to consider the exact significance of that commonplace of theological,economic, and literary, as well as political, theory. Especially is this true of the use of the weapon of natural law in the heat of controversy. At such times it is the winning of a cause, not the discussion of problems of ontology or metaphysics, that occupies men's minds. The rationalizations come later, if at all. Nevertheless, an attempt to get at the philosophical meanings of "natural" as the concept has been used in American political theory is essential to an understanding of the concept. It is from this point of view that the following list of meanings is submitted:

(1) Divine law or the law of God. Strongest in Puritan New England, but almost always present in some degree. Usually based upon a theistic concept of the universe, but in at least one very important period—the Revolution—to a large degree upon the principles of deism. In a few cases vaguely pantheistic, but never very clearly so. (2) The rational or reasonable; principles discovered out of the nature of things by human reason. (3) In accordance with human nature; principles inherent in the constitution of man. (4) In accordance with ancient law or custom, i.e., customs or laws that are so firmly established and of such long existence that they are held to be clearly fundamental in their nature. (5) Pertaining to the physical system of the universe. (6) The just or equitable. (7) The ideal as differentiated from or opposed to the actual. (8) Principles pertaining to the moral nature of man. Usually the same as number 6, but probably to be distinguished here because the emphasis is

Witness the contemporary fashion of bowing down in worship of the great god Progress; and yet how few, even among those who have written on the subject, have any real definition in mind for the concept. An excellent illustration of its loose usage is found in Herbert Hoover's *American Individualism* (1922).

always on the teachings of conscience. (9) The original as distinguished from the conventional. (10) Pertaining to the state of nature. (11) The appropriate or fitting. (12) In harmony with the conditions of growth or existence.

The second part of the problem set forth above calls for an answer to the question: what meaning has been given to natural "law"? Granted that men had in mind some notion of "natural", what did they desire to indicate when they spoke of the *laws* of nature? Negatively, they were not exponents of that theory of positive law that is usually associated with the name of Austin; such a theory, for all of Austin's talk about "divine positive law", relegates the laws of nature to the domain of ethics or morals. But the problem here is not so much the philosophy of law accepted by the writers under consideration (few of them, indeed, had more than the beginnings of a systematic legal philosophy); rather is it the meaning attached to one particular sort of laws, those of nature. In the case of the theorists who clung firmly to the idea of a divine legislator and of a divine law there is frequently present the notion of enacted law, of the laws of nature as being the decrees of an omnipotent legislative power. This, however, seems to be an analogy rather than a definition. In general, it is safe to say that natural law is held to be, not enacted law, but rules and principles existing *de facto*, that is, those inhering in the very nature of the Deity, of the universe, of man, of justice and right, or of civil society, to be discovered by reason, conscience, experience, or some combination of these. Furthermore, these laws or principles are thought of as applying to all alike, and to vary not at all. Since the days of the Roman jurisconsults, this part of the definition has changed but little: the laws of nature are universal in their application and immutable in their duration.

The last part of the attempt at definition has to do with the content given to the theory of natural law. A general answer was prefaced to the historical summary, and it is hardly possible to make a more definite statement than it provides. When it is remembered that natural law has included in its content defenses of revolutionary rights and of reactionary government,

natural equality and natural inequality, the inalienable right of majority rule and the immutable rights of vested interests, one can merely conclude that this content has varied with the needs of the user. There is a popular notion that the theory of natural rights has always been on the side of popular rights and privileges. The truth is quite different, for it has been used in support of the limitation of majority power almost as frequently as it has served to uphold the claims for an extension of the suffrage, and by John Quincy Adams and Story as well as by Jefferson.

The most spectacular, and probably the most important, use of natural law has been in connection with theories of what I have termed negative rights, that is, rights with which government may not interfere. But the American theory of natural law has been more than one of rights alone. The divine law of the Puritans, of Brownson, to a considerable extent of James Wilson and other writers of his time; the positive principles of the post-Revolutionary philosophy of Adams; the natural-law defense of slavery; the natural-science theories of Woodrow Wilson and others—all of these have been theories of positive right rather than of negative rights. In them many principles are advanced or justified: the law of the Ten Commandments, the divine character and function of government, the leadership of a natural aristocracy, the separation of political powers, the rules of international relationships, the rule of the majority, the superiority of the white race, the existence of principles superior to the Constitution, and almost innumerable standards of political and legal right and justice.

Nevertheless, it is the theory of natural rights that has been the characteristic American interpretation of natural law. Developing first in this country as an argument from the nature of the British constitution, it was soon set forth as an independent theory of politics. Becoming the accepted philosophy of the age, it inevitably found its way into the Declaration of Independence and the state bills of rights. Because it was the political staple of the time, it was used even in the struggle over the ratification of the Constitution, a controversy in which it had little logical place. After that it remained as the most important of American

political ideas for well over half a century. So strong was its hold that almost everyone who needed theoretical justification for a political opinion turned to it as a matter of course. Even to the present time, those who look backward for their political ideas cling to it in spite of the change in fashion.

So far as the definite content of natural rights is concerned, there was surprisingly little change between the Revolution and the Civil War. The rights, substantive and procedural, which were set forth in the Virginia Declaration of Rights are faithfully reflected in the works of Cooley and Woolsey. The slavery controversy, so far as the theory of rights is concerned, represents the application of the earlier theories to a specific situation rather than the formulation of new theories. Until recently, the bills of rights in state constitutions were almost exact copies of the earlier documents. Of late these bills of rights have been greatly expanded, but in the name of legal or constitutional rather than natural rights. The trimming down of procedual rights and the building up of the substantive side of the due process of law and the liberty of contract concepts is the most important change in the theory of natural rights what has taken place since the Revolution. In other words, the hold-over effect of the concept natural rights has been the protection of rights of property rather than of life and liberty. The original purpose of the theory has, for the time at least, ceased to exist, because, since the emancipation of the slaves, there has been relatively little cause for anxiety about the safety of political rights and liberties. But that is not to say that either the inherent validity or the potential usefulness of the concept of a supreme law of nature is of the past. After all, the important thing about it is not its content in any one time, but the fact that it is nothing more nor less than man's way of expressing his desire to find a solution for the insoluble, a formula to stand for the great political unknown, or, to put it differently, the attempt to find some higher source for the principles of justice than the will of the individuals who, for the moment, determine the positive law of the state. Since the problem is a fundamental one in political thought, it is doubtless as old as civil institutions. Almost the first record

we have of its attempted solution is the argument of Socrates and the later Sophists; and, although that philosopher went to his death rather than disobey the laws of his state, in the "Republic" we have the greatest of all arguments that justice is something more than the shifting rules of a civil society.

Most criticisms of natural law seem to me to miss the basic point involved just because they confuse the concept with its temporary meaning in any given time and place. Certainly it is necessary to do more than to point out that it has at times been of a harmfully individualistic or intellectualistic or *a priori* character. If one is willing to accept the doctrine of Professor Burgess that it is for the state and the state alone to define the law and to set the bounds to all private rights, then there is logical ground for denying the "truth" of the natural law doctrine. But one cannot be so sure that there will not be others who will some day deny the validity of certain of the laws of the state and proceed to argue against them with the aid of theories derived from this same concept; as I have pointed out, such things have been done in our own country. Or if one agrees with President Goodnow that a policy of opportunism, rather than one of working toward ideals, is best calculated to get desirable results in this day and time, again there is logical reason for doubting the worth of the notion of natural law, always providing that the opportunist is not taking pride in an absence of hard and fast ideals when what he really has are inarticulate ideals. Nor is this talk of "hard and fast" standards fair to the theorists of the past, for they were not so neglectful of the experiences and needs of their times as present-day scholars sometimes like to believe. The new "natural law with a changing content" is really, as James said of his pragmatism, a new name for old ways of thought. Natural law has really altered in its content as political and philosophical conditions have changed; nor is this inconsistent with the earlier statement that each theorist ordinarily views his own interpretation as a lasting one.

Again it is stated that we know that there are no laws or rights of nature. But is not such an opinion incapable of proof unless we predetermine its decision by our definition of law?

Even Austin was a follower of Bentham. What person would attempt to argue that the "greatest good of the greatest number" is a principle capable of exact proof, unless certain other unprovable premises are assumed? "Thinking makes it so", in politics and law as well as in morals, and if men from time immemorial have not always been content with the ideals achieved in their established systems of government, if they have felt the need for something more than the positive legal rules of their time and place, if they have believed that justice is not entirely fulfilled by the laws laid down by the majority or the ruling faction of the moment, so is it at least possible that in the future the concept of a law higher than any of man's making will return to its old place of importance.

SELECTION AND TENURE OF BUREAU CHIEFS IN THE NATIONAL ADMINISTRATION OF THE UNITED STATES

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The bureau chiefs are the key figures in national administration.[1] The units that they direct are inclusive enough to lend themselves to the purposes of supervision and coördination and to bring their heads in touch with the machinery of budget-making and legislation, but sufficiently focused to preserve for them a saving contact with details and technique. The importance of their positions can hardly be exaggerated.

Who are the present bureau chiefs? What has been their training? To what extent have they been recruited within the services they now direct, and to what extent from outside? What factors have influenced their selection? How long have they been in office? Judging by their experience as well as by the frequency with which their predecessors have been changed, how secure seems to be their tenure? These are the questions to which this paper is addressed. Its purpose is modest; it is not expected to uncover findings not already known, at least in general terms.[2] A systematic canvass of the bare facts, however, will help to a more precise understanding of the actual situation and perhaps facilitate discussions of our working theory of the relation of politics to administration. The time

[1] This statement begs the question of the further development of a system of under-secretaries and assistant-secretaries, now apparently well under way but still undefined in direction. The writer hopes in a later article to deal with this question and to examine the selection and tenure of under-secretaries and assistant-secretaries in the national government.

[2] See especially the impersonal summary in Lewis Mayers' valuable book on *The Federal Service* (1922), 99–110. The useful volumes in the series of Service Monographs of the United States Government, issued by the Institute for Government Research, do not, as a rule, mention the personal aspects of the history of the units which are so carefully traced from the statutory side.

is opportune for taking stock. Within the past fifteen years each of the great parties has swept into the seats of power after a period of deprivation.

In determining the scope of this inquiry, the term bureau is used somewhat broadly, to denote any major subdivision of an executive department.[3] No niceties of discrimination are attempted in the application of this definition. The line is hard to draw, in view of the lack of a standardized terminology in national administration and the inherent disparity of its various activities. In general, it excludes the congeries of units—appointments, supplies, mails and files, library, publications, and the like—which, clustering at the center of the department, are largely an expansion of the venerable office of chief clerk. The bureaus that fall within the definition differ widely among themselves. Some employ many thousands; others less than a hundred. The degree of self-direction with which they are invested varies greatly, even in respect to business routine; matters of personnel, for example, which are handled at a central point in the Department of Commerce, are relatively decentralized in the Department of the Interior. The term bureau, as it is employed in these pages, is unavoidably and consciously subject to these irregularities of meaning.

The bureaus under inquiry are confined to the departments of the Treasury, Interior, Agriculture, Commerce, and Labor. Peculiar conditions in the other departments, not to mention considerations of space, make it advisable to omit them altogether. In the War and Navy departments the heads of the units that correspond to bureaus are commissioned officers. The Department of State is moving rapidly toward a situation in which the heads of the various departmental bureaus in Washington, to a greater extent even than today, will have the status of foreign service officer and will be drawn from a reser-

[3] This statement disregards the intermediate divisions that are tending to develop in departments which, like Treasury and Agriculture, have not only an under-secretary, but also several virtual assistant-secretaries, each assigned to a group of bureaus or to a particular phase of work that ramifies widely through the department.

voir of personnel recruited and developed through promotion under the department's own system.[4] The Department of Justice is unique in its relation both to the departmental solicitors and also to the district attorneys who conduct the heterogeneous business arising within their regions; the divisions of the central staff for the supervision of various classes of actions are relatively informal, and the appointment of assistant attorneys general and their assignment to head these divisions still tend to be personal if not political.[5] The Post Office Department can be disregarded because, apart from the unusual degree of unity that characterizes its activities, its central staff is now almost wholly classified and chosen by promotion, excepting the four assistant postmasters general.[6] The independent commissions and boards also are omitted—although some, in every real sense, are departments with an elaborate bureau structure;[7] the multiple character of their heads, however,

[4] At the present time the individuals in charge of seven of fifteen units in the Department of State happen to have the status of "foreign service officer" in accordance with the act of May 24, 1924. Six of the remaining eight have a civil service background, although all eight were appointed as "drafting officers," under the provision exempting "officers to aid in important drafting work in the Department of State." (Civil Service Rule II, sec. 3, Schedule A, subd. II.)

[5] "Attorneys, assistant attorneys, and special assistant attorneys" are specifically excepted from examination. (Civil Service Rule II, sec. 3, Schedule A, subd. I). The assistant attorney general assigned to the customs division (located in New York City), however, has been in the service of the United States since 1899, when he started as a clerk of the Board of General Appraisers. At least one other of the seven assistant attorneys general had long prior service in the Department of Justice. The head of the Bureau of Investigation (an excepted position), entered the department as special assistant in 1919 and was appointed director in 1924. The position of superintendent of prisons is specifically excepted, but Mr. L. C. White, who in 1925 replaced Heber H. Votaw, brother-in-law of the late President Harding, was at one time superintendent of industries at Sing Sing prison and was for three years in the same work in the department of corrections of New York City. Mr. White died July 1, 1926.

[6] The last appointed of the four, Robert S. Regar, third assistant postmaster general (in charge of fiscal divisions), rose from stenographer and was chief clerk of the department at the time of his appointment in 1925.

[7] The Interstate Commerce Commission, for example, has twelve bureaus. The position of chief of bureau is in the competitive classified service in seven cases (in five of which the present incumbents were chosen by promotion), is excepted from examination in the case of four, and in one instance is a presidential office.

introduces alien problems. The few unattached single-headed bureaus are likewise passed without detailed comment.[8]

Selection on the basis of congruous training and stability of tenure may be encouraged by law and by custom. Fundamentally, of course, a well-understood tradition is more important than legal formalities. In such situations, however, law reacts profoundly on the development of custom. The individual records that are summarized in later paragraphs testify to the fact, for example, that (although the nature of the work is a primary factor) permanency of tenure is on the whole less likely when the head of a service is named by the President with the consent of the Senate than when his appointment is left to the head of the department, and the line of least resistance, to say the least, favors the promotions that are the usual result of the application of the merit system to the higher offices. Of the 54 bureaus treated in this paper, the chiefs of 22 are appointed, without formal restriction,[9] by the President and Senate. In the Lighthouse and Reclamation Services, the President alone selects. The

[8] The head of the Government Printing Office shifts regularly with party changes, although the law states that the occupant of the position "must be a practical printer and versed in the art of book-binding" (28 U. S. Stat. L., 603). There have been twelve Public Printers since 1876. George H. Carter, public printer since 1921, received his practical experience as clerk of the joint committee on printing for some years previously. The General Accounting Office is presumed to enjoy a special degree of independence, in view of the fifteen-year term and extraordinary procedure in removal prescribed for the comptroller general in the Budget and Accounting Act of 1921. John R. McCarl, the first incumbent, had a political background as secretary to Senator G. W. Norris for four years and then as executive secretary of the Republican Congressional Campaign Committee from 1918 to 1921. The unattached Veterans' Bureau, created by statute in 1921, has been trying since March, 1923, under the direction of a former army officer, Brig. Gen. F. T. Hines, to forget the episode of its first director, now in jail.

[9] The term restriction, as used here, does not cover such occasional stipulations in the organic acts as the provision that the Director of the Bureau of Mines must be "thoroughly equipped by technical education and experience"; or that the Commissioner of Fisheries must be a "person of scientific and practical acquaintance" with the problems involved; or that the chief of the Bureau of Animal Industry must be a "competent veterinary surgeon"; or that the Director of the Geological Survey must not be financially interested in mineral lands. Regarding the uncertain force of such provisions (apart from their possible value in furthering tradition) see 34 *Opinions of the Attorney General*, 96 (1924), involving the present Public Printer's qualifications.

statutes are usually silent regarding the matter of term. Five years, however, are specified for the Comptroller of the Currency and the Director of the Mint, regarding each of whom the law adds the unique provision that if the President removes an incumbent before the expiration of his term, he must communicate his reasons to the Senate; four years are specified for the Commissioner of Labor Statistics, the Director of the Coast and Geodetic Survey, and (by regulations that the President might change) for the Surgeon General of the Public Health Service, with one renewal only permitted in the last-named case. The heads of the Coast Guard, the Coast and Geodetic Survey, and (under a regulation) the Public Health Service are appointed by the President with the consent of the Senate, but the President's scope in selection is limited by the fact that these three bureaus now have peculiar systems for the recruitment and promotion of their commissioned personnel. The chiefs of the other bureaus under consideration are named by the heads of departments, and fall normally in the classified service. This group comprises all of the units in the Department of Agriculture except the Weather Service; the Park Service and (until 1926) the Reclamation Service in the Interior Department; the Bureau of Naturalization in the Department of Labor; and in the Treasury Department, the Bureau of Engraving and Printing, the Office of the Supervising Architect, the Director of Supply, the Director of Customs (although the present Director of Customs was appointed without examination under the dispensation of a special executive order), and the Commissioner of the Public Debt, not to mention certain other fiscal divisions that are not considered here because they fall a little short of the stature of bureaus.

The answer to the questions raised in this paper is sought in a briefly biographical survey of the individuals who are today the chiefs of bureau.[10] Some attention is given to back-

[10] The information is drawn, among other sources, from considerable correspondence, interviews, and the files of personnel divisions. The pity is that so hasty and cold-blooded a summary will not permit the enthusiasm and human detail which are deserved by many an instance of distinguished but obscure and often self-sacrificing public service, and that the mere names of the bureaus must suffice to remind the reader of the rich actualities of their work.

ground in each case, and the frequency and type of prior appointments are noted. The present incumbent, however, is always the focus, and the mode of his selection and his experience are allowed to dictate matters of arrangement. The bureaus are grouped on this basis. Group I includes those which have chiefs appointed under the general merit system administered by the United States Civil Service Commission; the course of the inquiry here runs from the instances of selection by promotion, through the cases of appointment from outside without competitive examination, to the examples of appointment directly by competitive examination. Group II comprises the bureaus which have their own systems of examination and promotion and of which the heads, although presidentially appointed, are taken from within. Group III brings together the bureaus that are at present directed by men who, before becoming chief, served in them or in some cognate employment in the national administration, rendering their selection by the President and Senate, although legally unconditioned, virtually a promotion. The final group (IV) assembles the bureaus which are now headed by chiefs who had no experience in national administration prior to their appointment. After such an individual roll-call of all the bureaus, the discussion can return at the end to some considerations of a general nature.

The question of the rôle of partisan politics overhangs this inquiry, but it is not the exclusive, nor even the most fundamental, problem involved. Beneath it are the problems of responsibility and sympathy in a bureaucracy. Beneath it, too, are problems that beset all administration, private as well as public: the appropriateness of technical training and experience as a preparation for supervisory duties; the value of the injection of new blood at the top in comparison with seasoned service; the increasing or diminishing returns from long tenure.

I

The application of the merit system to the position of bureau chief is already extensive, involving at least twenty-six bureaus, many of which are of great size and some of which carry on

troublesome regulatory activities as well as functions of research and education. The results are impressive. Experience with the choice of bureau chiefs directly by competitive examination, however, has been limited, and is likely to remain so. The reason for this is two-fold: (1) a well-running merit system tends to fill higher positions, like those of bureau chiefs, by promotion, thus pushing the task of original selection by examination back into ranges of employment where the desiderata are less complicated; and (2) when bureau chiefs have been brought directly from private life into classified positions, it has sometimes been accomplished under the civil service rule (Rule II, Sec. 10) which permits the Commission to authorize the appointment without competitive examination of a person whom a department represents to be uniquely qualified and available. Competitive examinations for the selection of bureau chiefs are therefore rare, although two instances have occurred very recently.

1.

Nearly four-fifths of the present bureau chiefs whose positions are classified attained them by promotion. Whatever examinations they took happened relatively early in their careers.[11] A classified status, once acquired by an individual and kept alive by avoiding too long separation from the government employment, is a permanently vested value.[12] On it—

[11] A check of the service-record cards in the files of the Civil Service Commission seems to indicate that not a single bureau chief whose position is classified and who obtained it by promotion took an examination at any late stage in his career.

[12] An interesting example of how long a classified status can be preserved under extraordinary circumstances is discussed below, p. 564, in the case of Elwood Mead, who left the Department of Agriculture in 1907 but preserved his status by working for a foreign government and the state of California until 1924, when by re-instatement he was put without examination in the classified position of Director of Reclamation. It may be added that six of the men who are now bureau chiefs by presidential appointment preserve, personally, the classified status which they gained in prior government service: C. F. Marvin, Weather Bureau; G. K. Burgess, Bureau of Standards; Henry O'Malley, Bureau of Fisheries; D. H. Hoover, Steamboat Inspection Service; W. W. Steuart, Bureau of Census; Ethelbert Stewart, Bureau of Labor Statistics. This does not carry any protection in their present positions, but indirectly is an anchor to windward.

particularly in the professional service[13]—the civil servant can slowly build increments of salary and grade, often without undergoing further formal examinations. Some of the present generation of bureau chiefs, indeed, never took an examination at all; they began to work for the government before the branches in which they were then employed had been put under the merit system, and when it was extended they were covered into the classified competitive service.[14]

Promotion, in some cases, has been more a change in the job than a change of jobs. Dr. L. O. Howard, chief of the Bureau of Entomology, was assistant entomologist in 1878 at the age of twenty-one, when the enterprise that has since evolved into a large bureau during his life-time, and largely under his direction, consisted of little more than the personal laboratory tables of the entomologist and two assistants. When Dr. Whitney, the only head the Bureau of Soils has yet had, took up in 1892 in Washington the investigations that developed into this bureau, he asked for two laborers at $50 or $60 a month and the part-time services of a stenographer. These men did not go to the mountain; it came to them. Promotion, however, is oftener the cumulation of changes of compensation, title, and degree of responsibility; sometimes of transfers also. In a department like Agriculture, the memoranda submitted to the Secretary by the bureau chiefs and others in favor of the advance of particular subordinates are not unlike the statements from the head of a faculty in support of recommended promotions—and doubtless as fallible. Publications are cited; particular

[13] See the provisions in Sec. 13 of the Classification Act of March 4, 1923, which state that the professional and scientific service shall include "all classes of positions the duties of which are to perform routine, advisory, administrative, or research work which is based upon the established principle of a profession or science, and which requires professional, scientific, or technical training equivalent to that represented by graduation from a college or university of recognized standing." Within this service are seven grades, compensation in the lowest beginning at $1,860, and running to $7,500 for the highest grade.

[14] In the Department of Agriculture, for example, L. O. Howard, chief of the Bureau of Entomology, Milton Whitney, chief of the Bureau of Soils, and E. W. Allen, director of the Office of Experiment Stations, were thus covered into the classified service about 1895.

instances of initiative in research or administration are stressed.[15] Departmental committees may be involved. Thus the head of the Bureau of Chemistry, writing to the Secretary of Agriculture in 1923 to recommend an increase of salary for J. K. Haywood, chief of the miscellaneous division and chairman of the Insecticide and Fungicide Board, added: "The Efficiency Committee of the bureau, composed of three laboratory chiefs, were asked to give special consideration to this matter, because I have found that colleagues generally have a pretty fair estimate of a man's worth."

How varied are the avenues of approach when the position of bureau chief is in the classified service, and how stable the service becomes, are revealed by considering, bureau by bureau, the records of the present chiefs who achieved such positions by promotion.

The distinguished head of the Bureau of Entomology, Dr. L. O. Howard, entered the service of the Department of Agriculture at the age of twenty-one, a year after his graduation from Cornell University in 1877. His graduate work was done later at Georgetown, while he was employed by the government. First as assistant entomologist, and after 1894 as chief entomologist, his career has been virtually the history of a bureau. Continuity of leadership had been present in this work from the start. The first entomologist in the newly created Department of Agriculture, Townsend Glover, served from 1863 to 1878; his successor, C. V. Riley, from that time until 1894, except for a brief interlude between 1879 and 1881. In 1894, Dr. Howard was put in charge of the division that a decade later was renamed the Bureau of Entomology. His salary in 1894 was $2,500; it advanced by stages to $6,500 in 1925.

[15] Such comments as these, for example, abound in the departmental memoranda recommending promotions: "The investigation of American hops which he (Mr. Stockberger) undertook and carried out as a new line of investigation is regarded as a model of crop investigation in its relation to economic and agricultural conditions." "One of the particular accomplishments of Mr. Warburton of an investigational nature was his development and establishment of selections for the Sixty-Day and Kherson Oats."

Milton Whitney, chief of the Bureau of Soils, has been even more completely the creator of the bureau which he heads. Born in 1860, he had a three-year course in chemistry at Johns Hopkins University, and between 1883 and 1891 was connected (in the capacities of assistant chemist, superintendent of the state experiment station, and professor of chemistry) with state institutions in Connecticut, North Carolina, and South Carolina. In 1891 he became soil physicist at the Maryland Experiment Station. In the next year he was brought to the Weather Bureau to carry on the soil investigations he had already begun. They were destined to expand into the present system of soil classification and of soil mapping which has now covered one-third of the area of the continental United States. In 1894 these investigations were segregated in a division of soils, with Dr. Whitney as chief at $2,000; in 1904 this became the Bureau of Soils. Dr. Whitney advanced without examination through various salary ranges to the level of $6,000 in 1925.

The Bureau of Plant Industry—in some respects the greatest galaxy of units of applied research in the world and the fertile matrix from which activities as varied as farm demonstration work and agricultural economics have sprung—has had only two chiefs. In 1913 William Alton Taylor succeeded Dr. Beverly T. Galloway,[16] who had been continuously head of the bureau from 1901, when it was formed by the consolidation of the then existing divisions of agrostology, botany, gardens and grounds, pomology, and vegetable physiology and pathology. Dr. Taylor was born in 1863 and was graduated from the Michigan Agricultural College in 1888. After three years of practical experience on a fruit farm and nursery, he entered the Department of Agriculture in 1891, and was for ten years an assistant pomologist (beginning at $1,600), and for nine years thereafter pomologist in charge of field investigations. In 1910 he became

[16] Dr. Galloway resigned to become Assistant Secretary of Agriculture. Later he was dean of the N. Y. State College of Agriculture at Cornell University, but he is now pathologist and consulting specialist in the office of foreign seed and plant introduction in the Bureau of Plant Industry—a refreshing case of the return of a research-worker from the diversions of administration.

the assistant chief of the Bureau of Plant Industry at $4,000. In recommending to the Secretary on March 17, 1913, that he be advanced to chief at $5,000, Dr. Galloway wrote: "Mr. Taylor has been in the service of the Department continuously since February 24, 1891, and has proven to be one of our most efficient administrative officers as well as a very thorough investigator." He added that he had given "utmost satisfaction as assistant chief."

The present head of the Bureau of the Biological Survey, Edward W. Nelson, is the oldest bureau chief in active service. In requesting, in 1925, that the Civil Service Commission authorize his continuance in office two years longer, despite the terms of the Retirement Act, the Department said: "Dr. Nelson is strong, vigorous and active, and his services to the Department are of increasing value and should be continued beyond the date of his eligibility for retirement. He has accumulated knowledge and experience during more than fifty years .... which are of inestimable value to the Department in carrying on the work of the Bureau." The service referred to began in 1877 at the age of twenty-two, when (having been graduated from the Cook County Normal School in 1875) he was on the revenue cutter that searched for the Arctic ship Jeannette; and he was engaged in observational work in Alaska until 1881. Six years of ranching in Arizona followed, broken by a turn of government service. In 1890 he joined what has since grown into the Bureau of the Biological Survey, climbed through various salary levels from $1,200, became chief field naturalist in 1907, was put in charge of biological investigations in 1913, and became assistant chief in 1914, and finally chief in 1916. He succeeded Henry W. Henshaw, just as Henshaw in 1910 followed Dr. C. Hart Merriam, the head of the Biological Survey work since it began in 1885 with three employees and an appropriation of $5,000.

Three bureau chiefs span the whole history of the great Bureau of Animal Industry from its organization in 1884 to the present day. Dr. D. E. Salmon, its first head, was succeeded in 1905 by his assistant, Dr. A. D. Melvin; and on Melvin's death in

1917, Dr. J. R. Mohler, then assistant chief of the bureau, was advanced to chief. Dr. Mohler's service with the bureau began in 1897 at the age of twenty-two. He had already had schooling at Temple College and the University of Pennsylvania, and he subsequently took work in the medical department of Marquette University and the Alfort Veterinary College. His duties in the bureau were first those of an assistant inspector in the quarantine division at Kansas City at $1,200. In 1899 he was brought to Washington and transferred to the pathological division, of which he first became assistant chief, and then chief, serving in this position for twelve years until 1914, when he was made assistant chief of the bureau itself.

The chief of the Forest Service, W. B. Greeley, was educated as a forester and has spent his whole life (apart from some service as chief of the Forestry Section, A. E. F.) in the United States Forest Service. Having been graduated from the University of California in 1901 and the Yale Forestry School in 1904, he entered the Forestry Service by civil service examination at the age of twenty-five. He first served as a forest assistant at $1,000 and, in successive years, as a forest inspector in charge of timber sales in the field, as a forest supervisor in charge of one of the national forests, and as associate chief of the division of timber sales at Washington. From 1908 to 1911 he was a district forester, and from 1911 to 1917 an associate forester in charge of the branch of silviculture, becoming chief of the bureau on April 16, 1920. He rose in this way to the direction of a service relatively characterized by stability of tenure.[17]

[17] Dr. B. E. Fernow—a German by birth, educated in the Forest Academy at Muenden and at the University of Koenigsberg—was chief of the division of forestry when it was first definitely organized in 1887 and continued in charge until 1898, when he went into academic work. Gifford Pinchot, a graduate of Yale, 1889, who had studied forestry abroad and at Biltmore, was appointed head in 1898 and served until January 7, 1901. In the meantime the division was made a bureau in 1901 and named the Forest Service in 1905, when the national forests were transferred to the Department of Agriculture. Pinchot's removal by President Taft, as a result of the controversy with Secretary Ballinger over the Alaskan claims, helped to make political history. Pinchot's successor, Henry S. Graves, was head of the famous Yale Forestry School at the time of his appointment. He returned to academic work after his resignation as chief of the Forest Service in 1920, and is again dean of the Yale Forestry School.

Having taken his graduate degree at Göttingen in 1890 at the age of twenty-six, Dr. Edwin W. Allen immediately entered the Department of Agriculture and as early as 1893 was assistant director of the Office of Experiment Stations which had existed since 1887, and of which Dr. A. C. True had just been made director.[18] When, in 1915, the States Relations Service was founded with Dr. True as its first and only head, Dr. Allen was made chief of the division of experiment stations. In 1923 the States Relations Service was resolved into its component elements, and Dr. Allen became the head of a bureau instead of a division, and in addition was made assistant director of scientific work for the whole department.

Clyde W. Warburton, director of the Agricultural Extension Service, has been in the service of the Department of Agriculture from the beginning of his career. Born in 1879, he joined the staff of the Bureau of Plant Industry promptly after his graduation from Iowa State College in 1903. Early in his service with that bureau he had contact with the crop-diversification demonstrations in Texas, provoked by the boll weevil ravages, out of which the county agent and extension system evolved. His government service was broken in 1911 by a short term in editorial work in the agricultural publishing field. In 1912, however, he re-entered the employment of the Department of Agriculture by a special civil service examination. When the States Relations Service was disintegrated, Mr. Warburton (then agronomist at a salary of $5,000) was put at the head of the now separate Agricultural Extension Service and was made Director of Extension Work for the whole department.

Joseph W. T. Duvel was appointed chief of the recently organized Grain Futures Administration in 1925. He was senior grain exchange supervisor in the Chicago district and his promotion took the form of a transfer from the field service, which the Civil Service Commission authorized by certificate.

[18] The first director was W. O. Atwater, professor of chemistry at Wesleyan University and director of the Connecticut Agricultural Experiment Station. He resigned in 1891 and was succeeded by A. W. Harris. Dr. True entered on the editorial side of the work and was assistant director when Mr. Harris resigned in 1893.

This final advancement crowned a long specialization on problems of grain standardization. Born in 1873, he received his bachelor's degree at Ohio State University in 1897 and a graduate degree at the University of Michigan in 1902. In 1898–1899 he was assistant botanist at the Ohio State Experiment Station. In 1902 he joined the Bureau of Plant Industry. As early as 1907, in recommending an advance in salary to $2,250, the head of that bureau said: "This recommendation is made largely on account of Dr. Duvel's work in the development of the moisture-testing apparatus which has been introduced extensively in the grading of grain throughout the greater part of the country, and his familiarity with the conditions and problems to be solved in the work of grain standardization for which he shows a special aptitude." He was in charge of this work after 1910. For a while, in 1919, he was employed by a big Canadian concern at a salary about as large as a bureau chief receives, but he returned to government service, "the work of which he looks upon as more congenial than commercial life." In asking for his reinstatement, Chester Morrill, then in charge, wrote on December 30, 1921: "Dr. Duvel has been largely responsible for the organization and development of the governmental work in grain standardization in this country."

When the separate Bureau of Dairying supplanted the former dairy division of the Bureau of Animal Industry under an act of May 29, 1924, Carl W. Larson, the chief of the division, became by transfer the head of the new bureau. Dr. Larson had been made division chief in 1921, when the Secretary of Agriculture was told that "Mr. Rawl, chief of the dairy division and assistant chief of this bureau (Animal Industry) has twice recommended that he be relieved as chief of the dairy division and that Dr. Larson be appointed to that position." He had originally entered the division as a dairy expert in 1917 in connection with war work. His appointment without competitive examination was authorized at that time under Rule II, Sec. 10.[19] Dr. Larson received his bachelor's diploma from Iowa State College in 1906 and his higher degree from Columbia

[19] *Infra*, p. 571.

University in 1916. Between 1906 and 1915 he was instructor, assistant professor, and professor in charge of the dairy husbandry department at Pennsylvania State College, and in 1916–1917 he was assistant professor of agriculture at Columbia University.

The position of Charles L. Marlatt, chairman of the Horticultural Board, is analogous to that of a bureau chief, although he is connected with the Bureau of Entomology, having been assistant chief since 1894 and associate chief in charge of regulatory work since 1922. When he entered the service of the United States in 1891 he was twenty-six years old, and had been two years assistant professor in the Kansas Agricultural College, from which he was graduated in 1884. Writing at the time he was given an honorary degree by that college in 1921, the Director of Scientific Work in the Department of Agriculture recalled Dr. Marlatt's primary rôle in the attempt to get a national plant quarantine system: "Every attempt .... was met with the bitter opposition of the commercial interests and little headway was made for some time. In fact those responsible for the leadership of this movement became discouraged and practically gave it up. Not so with Mr. Marlatt. Almost single-handed, he began a new campaign for a modified and restricted quarantine of the importation of materials liable to introduce these pests and diseases. As a result of a number of years' work the federal horticultural law was finally established in 1912, and Mr. Marlatt, who had shown his grasp of the situation and his courage and patience in overcoming obstacles, was placed in charge of the difficult task of administration .... This undoubtedly stands today as the greatest single monument of Mr. Marlatt's work and achievement."

A graduate of Cornell University in 1896, John K. Haywood, chairman of the Insecticide and Fungicide Board, entered the Bureau of Chemistry almost immediately, standing highest in the examination. Later, while in the employ of the government, he took a medical degree at George Washington University. A notable bit of service by him, commended by the chief of the Bureau of Chemistry in 1907, was collecting "the evidence

which was used in the courts to close the smelters in the West which were destroying government forests and the vegetation of hundreds of farmers. His evidence was of such a conclusive character that the Supreme Court sustained the rulings of the courts below and confirmed the decision. The government relied solely upon Mr. Haywood's testimony in this great case." But Mr. Haywood's chief interest lay in insecticide problems. After 1902 he was chief of the Insecticide and Agricultural Water Laboratory, and in 1905 he was made head of the Miscellaneous Division, which included that laboratory. He was a member of the Insecticide and Fungicide Board from its inauguration in 1911, and in 1913 he replaced Dr. Marion Dorsett as chairman of the board. Writing on December 27, 1923, the head of the Bureau of Chemistry remarked, apropos of a recommendation for an increase in pay: "I think it is generally conceded that Dr. Haywood has done more than any other man in the country in the development of the chemistry of insecticides and fungicides."

Dr. Cottrell, director of the Fixed Nitrogen Research Laboratory, is an outstanding example of the spirit of applied research in government service. Most of his official work has been with the Bureau of Mines. Born in 1877 and a graduate of the University of California in 1896, he finished his graduate work at Leipzig in 1902, and until 1911 was a teacher of chemistry at the University of California. He then entered the Bureau of Mines, became its chief metallurgist in 1916, and its assistant director in 1919. In 1920 he was appointed director of the Bureau of Mines, but on the understanding that he would serve only a short time. Resigning, he took up the analysis of nitrates, serving the government as a consultant on a per diem compensation while he familiarized himself with the problem. His classified status had been preserved in the meantime, and in September, 1922, he was transferred to the directorship of the Fixed Nitrogen Research Laboratory, taking the place of Dr. Tolman, who had gone to the California Institute of Technology. In January, 1924, the Secretary of Agriculture congratulated Dr. Cottrell, and with him the whole scientific service of the government,

"upon the honor which has been conferred upon you by the committee of the American Chemical Society in including your name in the list of thirty-three Americans who have achieved eminence in chemistry.[20] Dr. Cottrell was once instrumental in establishing the Research Foundation to meet the problem of inventors who wish not to take a personal profit from their discoveries, but to have the earnings used to stimulate further research.

In the Interior Department there has been one bureau headship—that of the Reclamation Service—which was a classified position and has been filled recently without direct examination through as interesting a combination of promotion and transfer as the present civil service affords. The new Commissioner of Reclamation, the eminent Elwood Mead, has had a varied but cumulative experience. Born in 1858, he finished his undergraduate work at Purdue University in 1882 and was given a degree in civil engineering from Iowa State College the next year. After a brief turn with the United States engineers and some teaching in the Colorado Agricultural College, he served as territorial and state engineer of Wyoming from 1888 to 1899. From 1897 to 1907 he had charge of the studies in irrigation made by the United States Department of Agriculture, being chief of the irrigation and drainage investigations in the Office of Experiment Stations. When he resigned in 1907, it was to go to Australia as chairman of the Rivers and Water Supply Commission of the state of Victoria. Returning from this work to the United States in 1915, he at once became chairman of the California Land Settlement Board, then receiving nation-wide attention because of the colony that the board was settling at Durham. At the same time, he resumed his former relations with the University of California, as professor of rural institutions. In 1924 he was appointed Commissioner of Reclamation in the Department of the Interior. No examination was neces-

[20] The other three on the list from the District of Columbia were: Harvey W. Wiley, so long chief of the Bureau of Chemistry; W. F. Hillebrand, chief chemist of the Bureau of Standards; and F. W. Clarke, chief chemist of the Geological Survey.

sary; technically it was a case of transfer, for Mr. Mead had preserved his classified status in the national civil service during the seventeen years he was in the employ of the states of Victoria and California, under the amendment to the transfer rule which recognizes continuous service under a state or a foreign government.[21] Largely for the purpose of making it possible to retain Mr. Mead (who had drawn a salary of $11,000 in his previous position, from which he was technically absent only on furlough), the position of Commissioner of Reclamation was recognized by a statute of Congress approved May 26, 1926, providing that the commissioner shall be appointed by the President and shall receive a salary of $10,000.

The appointment of Elwood Mead, it is to be hoped, reassures to the Reclamation Service the stability that was so seriously disturbed in 1923, when Secretary of the Interior Work forced the resignation of Arthur Powell Davis. Up to that time there had been a pronounced degree of continuity in the reclamation personnel. The foundations had been laid by Major Powell while director of the Geological Survey between 1881 and 1894. The impetus that led to the Reclamation Act of 1902 was notably furthered by Frederick Haynes Newell, a member of the Survey's staff. After the passage of the act, the duties thereunder were for a time performed by the Geological Survey, but on March 9, 1907, the Reclamation Service became a separate unit. Mr. Newell's long service with the Geological Survey, beginning in 1888 at the age of twenty-six, had always focused on hydraulic problems; he had been hydrographer from 1890 to 1902, and thereafter chief engineer of the reclamation work. When he became director of the new Reclamation Service in 1907, his place as chief engineer was taken by Arthur P. Davis, then assis-

[21] Rule X, Sec. 3, as amended May 2, 1924, provides: "any person may be retransferred to a position in which he was formerly employed or to any position to which transfer could be made therefrom if since his transfer he has served continuously and satisfactorily under any of the following conditions . . . . (3) In the service of a state, county, municipality, or foreign government in a position in which he has acquired valuable training and experience." The growing significance of the relations of national and state personnel will be commented on in the concluding instalment of this article.

tant chief engineer. Mr. Davis succeeded to the directorship in 1914. He had practically spent his life in technical government service. He had entered the Geological Survey as assistant topographer in 1882 at the age of twenty-one, completing his college work while employed in the District of Columbia. His investigations in the years before the Reclamation Act, and the extensive construction work which he directed after the beginning of the national reclamation system, put him in the front ranks of his profession and brought him, among other tokens of recognition, election in 1920 as president of the American Society of Civil Engineers.

In the face of this personal record and the whole tradition of the Reclamation Service, Secretary Work in 1923 asked Mr. Davis to tender his resignation. This virtual removal was widely criticized, and sharp inquiries from such bodies as the Federated Engineering Societies were made. Secretary Work offered an explanation centering around this idea: "In the beginning, necessarily, the work was the construction of projects involving engineering skill, but with their completion there grew up another aspect, namely, the problem of the water-users and the collection of the original cost as contemplated by the law. It is thought that these problems, which involve dealing with the farmers individually, could be best handled by a practical business man familiar with the conditions peculiar to irrigation in the west." By this formula he sought to justify the appointment of David W. Davis to the newly-named position of Commissioner of Reclamation. The new head was quite without technical training and almost self-made, having been in coal-mining as a boy, a store clerk, manager of a farmers' coöperative, active in local banking in Washington and Idaho, and on the political side an active Republican and governor of Idaho from 1919 to 1923. His appointment to the Reclamation Service without compliance with civil service requirements was authorized by an executive order a little while after the announcement of his selection. Some of the factors at play in this situation can be deduced from a general knowledge of conditions in the public land states; others can be guessed. The final question of motives must go unanswered.

Fortunately, it seems, the subsequent appointment of Elwood Mead and the quiet dropping of the ex-governor have been a virtual repudiation of the department's action in 1923.

The Bureau of Naturalization is emphatically committed to the recruitment of its chiefs by promotion.[22] When the service was developed into a separate bureau in 1913, Richard K. Campbell, who had been with the immigration service since 1894, and who since 1906 had been the head of the division of naturalization in the old Bureau of Immigration and Naturalization, was put in charge of the new unit. He retired on account of age in 1923 (serving briefly after that as a member of the board of review), and was succeeded by Raymond F. Crist, long second in command. Mr. Crist had been assistant chief of the former division of naturalization from 1907 to 1913, deputy commissioner of naturalization from 1913 until 1919, and thereafter director of citizenship until his appointment as Commissioner of Naturalization in 1923. He had originally entered government service in Washington at the age of thirteen as a messenger boy, taking work at what is now George Washington University, a degree in dentistry at Howard University, and later the law degree secured incidentally by so many of the male employees in the central departments who are at all ambitious. Promoted to clerk in 1895, Mr. Crist was private secretary to the Secretary of Commerce and Labor in 1904-1905 and for two years thereafter a commercial agent of the department in the Far East, before beginning his continuous service in the naturalization work.

In addition to the numerous instances in the Department of Agriculture and the single cases in the Departments of the Interior and Labor, the Treasury Department offers four examples of bureau chiefs whose positions are classified, but who have attained them by promotion.

The Bureau of Engraving and Printing is an industrial undertaking which in 1925 numbered 5,098 employees. The present

[22] The act which created the Department of Labor in 1913 (37 U. S. Stat. L., 736) stated that there should be a commissioner and deputy commissioner of naturalization under the Secretary of Labor and that appointments to these positions should be "made in the same manner as appointments to competitive civil-service positions."

director, Alvin W. Hall, entered government service during the war after a varied career as clerk of a mining company, bookkeeper and cashier, and accountant and auditor in connection with a group of mining and electrical production companies. Between July, 1918, and July, 1920, he was senior cost accountant in the cost accounting section of the Ordnance Bureau, being at one time chief of a section involving 3,000 clerks and accountants. Following that, he was an accountant and investigator of efficiency problems for the Bureau of Efficiency. He worked from this into the position of chief of the planning unit of the Bureau of Engraving and Printing and, at the age of thirty-seven, became its head by promotion in 1925, in connection with a reorganization which, it is hoped, will terminate the disturbances that have involved the bureau since 1922.

The wholesale removals in the Bureau of Engraving and Printing in 1922 constitute a deplorable and still largely inexplicable incident in recent administration. On March 31, 1922, President Harding suddenly issued an executive order removing the director of the bureau, James L. Wilmeth, the assistant director, and some twenty-seven heads and assistant heads of divisions. Louis A. Hill, who had been with the bureau since 1900 and was then assistant chief of the division of engraving, was made director The sweeping removal of the minor executives was almost laughably disguised as a reorganization; the titles of positions were slightly changed. No official explanation was offered other than President Harding's statement, in replying on April 5 to the protest of the National Federation of Federal Employees, ". . . that no action less sweeping than was taken would give complete assurance of the full protection of the Government's interests." About a year later, on February 14, 1923,[23] the march down the hill again was begun when an executive order was issued making sixteen of those who had been removed eligible for reinstatement in the classified service; seven had reached the retirement age in the meantime, and three had already been taken back to the

[23] *40th Report of the U. S. Civil Service Commission, 1922–1923*, p. 152–3. By an order on December 24, 1923, two others, including James L. Wilmeth, were given authority to reënter the classified service. *41st Report, 1923–1924*, p. 105.

bureau, although at a reduced grade. The retreat was completed when Louis A. Hill resigned without prejudice on January 1, 1924, and Major Wallace W. Kirby (an officer in the Engineering Corps with lithographing and mapping experience) was temporarily assigned as director, with the understanding, to quote the Secretary of the Treasury, that "after the bureau is put once more in good working order a permanent director will be appointed." Major Kirby soon reinstated sixteen of the division chiefs to the jobs from which they had been removed in 1922. The former director, James L. Wilmeth, declined reappointment. No satisfactory explanation has yet been given of the mixture of motives behind this whole farcical episode. One factor was doubtless the rumor of duplications of Liberty bonds and other public securities. This was subsequently declared to be groundless, in an official statement by the Secretary of the Treasury in 1924. There was at that time a disposition to allow the blame for misleading the President in 1922 to fall on the special agent of the Department of Justice who had been investigating these charges. Suspicions of partisan motivation were naturally excited by the fact that the upheaval in the Bureau of Engraving and Printing nearly coincided with the appearance of Elmer Dover as an assistant secretary of the Treasury, from December, 1921, until July, 1922. It was admitted by some frank supporters of the theory of administrative cohesion that he was there to see that the political side was not overlooked. Certainly Mr. Dover's background was political. He had been Senator Mark Hanna's private secretary from 1897 to 1905 and secretary of the Republican National Committee from 1904 to 1908, and in 1920 he had managed President Harding's campaign on the Pacific Coast. In any event, it is hoped that the repudiation of the removals in 1924, and the appointment of Alvin W. Hall, will restore the Bureau of Engraving and Printing to the status it was beginning to assume when Joseph E. Ralph in 1908 and James L. Wilmeth in 1917 were promoted to the position of director after a long civil service experience.

The Supervising Architect's position is in the classified service, and the present incumbent, James A. Wetmore, reached it by

promotion. In 1885, at the age of twenty-five, he became connected with the Treasury Department in an excepted position, but he was subsequently transferred to a classified status. His connection with the Supervising Architect's office dates from 1903. He was acting head in 1912-1913 and has been acting head since 1915. The unit itself dates from 1853, and in a little over seventy years there were eighteen changes. Disregarding four long terms, there were fourteen occupants of the office in a period of thirty years. Between 1888 and 1898 eight men successively occupied the position.[24] Since that time, however, there has been a tendency toward stability. James Knox Taylor served from 1898 to 1912, and James A. Wetmore, except for the period 1913 to 1915, has served since 1912, although always as Acting Supervising Architect. Mr. Wetmore is not an architect; he was a law reporter early in life, and took a law degree while in government service. It may be added that the Secretary of the Treasury, in 1920, recommended that the title of the office be changed to commissioner of public buildings, "on the ground that the work of the Supervising Architect was chiefly administrative; that the work, in other words, did not demand an architect, but a trained executive."[25]

The present Director of Supply, Dan C. Vaughan, reached this classified position without examination as a result of transfers and promotions. Beginning at the age of twenty, he worked in the Government Printing Office from 1893 to 1905 as compositor, proof-reader, clerk, and copy editor, and during this time was covered into the classified service. He was transferred in 1905 to the Department of Commerce, serving as a clerk and becoming chief of the Division of Publications. From 1918 to 1922 he was chief clerk of the Bureau of Internal Revenue in the Treasury Department. He was made Director of Supply in 1923, with duties that touch all departments of the government.

The Commissioner of the Public Debt, William S. Broughton, entered government service almost immediately after graduation from the University of Chicago at the age of twenty-five. He

[24] Darrell H. Smith, *The Office of the Supervising Architect* (1923), p. 45.
[25] *Op. cit.*, p. 44.

was covered into the classified service in 1902 and has risen without examination. Until 1919, he was chief of the Division of Loans and Currency; then he was placed in the newly created position of Commissioner of the Public Debt.

2.

The present heads of the Bureaus of Chemistry, Public Roads, and Home Economics, and of the National Park Service were appointed to their positions without competitive examination under the provision known as Civil Service Rule II, Sec. 10. This executive rule authorizes the Civil Service Commission to waive examination when it is convinced "that the duties or compensation of a vacant position are such, or that qualified persons are so rare, that in its judgment such position cannot . . . be filled at that time through open competitive examination."[26] The Commission requires a statement of the qualifications of the person whose appointment is desired. This procedure amounts to a non-competitive, qualifying examination. Approval is not perfunctory apparently, even in the case of positions like that of bureau chief. In 1925, for example, when the Department of Agriculture was considering the selection of a new director of the Bureau of Agricultural Economics and had settled on Thomas P. Cooper, it first contemplated his appointment under Rule II, Sec. 10, but "informal conferences with the [Civil Service] Commission developed that it was the opinion of the latter that the vacancy was one which should be filled through examination and that it would not be possible to approve the appointment of Mr. Cooper under Sec. 10 of Rule II." So, too, the Commission

[26] The full text of Rule II, Sec. 10 (an amendment of July 25, 1914), is as follows: "Whenever the Commission shall find that the duties or compensation of a vacant position are such, or that qualified persons are so rare that in its judgment such position cannot, in the interest of good civil-service administration, be filled at that time through open competitive examination, it may authorize such vacancy to be filled without competitive examination, and in any case in which such authority may be given, evidence satisfactory to the Commission of the qualifications of the person to be appointed without competitive examination shall be required. A detailed statement of the reasons for its action in any case arising hereunder shall be made in the records of the Commission and shall be published in its annual report. Any subsequent vacancy in such position shall not be filled without competitive examination except upon express authority of the Commission in accordance with this section."

declined in 1925 to waive competitive examination in the appointment of a new chief of the Packers and Stockyards Administration. These indications of policy gain interest from the fact that the previous head of the Bureau of Agricultural Economics was appointed under the rule.[27] A point of friction in connection with the provision has been the feeling of the Civil Service Commission that the departments have not been giving it adequate warning regarding vacancies.[28]

How Rule II, Sec. 10, operates virtually as a system of non-competitive examinations is illustrated by considering the four bureau chiefs now in office who were brought into the national service under its provisions.

Charles A. Browne's appointment in 1923 as chief of the Bureau of Chemistry was in effect a reinstatement and promotion. Dr. Browne had been previously connected with the bureau. Writing on this point in his recommendation to the Commission, the Director of Regulatory Work in the Department of Agriculture said: "This appointment is requested under Sec. 10 of Rule II, as it is necessary to secure for this position a chemist of outstanding ability and reputation. Dr. Browne is at present in charge of the New York Sugar Trade Laboratory. He was formerly chief of the Sugar Laboratory in

[27] The appointment of Dr. H. C. Taylor, without examination, was approved by the Commission on March 13, 1919, on the basis of a statement from the Secretary of Agriculture that a committee consisting of those in charge of rural economics and farm management studies at Cornell, Ohio State, Minnesota, California, and the Massachusetts Agricultural College had been considering the reorganization of the Department's work in agricultural economics, and that "he [Dr. Taylor] is one of the two or three leading men in the country on rural economics and farm management and, so far as the Department knows, is the only man with the requisite qualifications whose services could be secured." It is understood that Thomas P. Cooper declined to consider appointment at that time.

[28] The Civil Service Commission, writing to the Secretary of Agriculture on August 22, 1925, and recalling the terms of a letter on September 27, 1923, which had dealt with appointments under Rule II, Sec. 10, said: "We urged that even in cases of such appointments, the Commission should be consulted at the time initial steps are taken to fill the vacancy. At the time we cited two reasons for this: first, it would avoid an embarrassing situation which might arise if the prospective appointee had been offered the place and the Commission should later feel that it could not properly approve the appointment; second, the Commission believes that it can be of real service to the department in securing qualified candidates."

this bureau, resigning in 1907 to accept the position with the New York Sugar Trade Laboratory, which was created for the purpose of serving as an umpire in disputes between wholesale buyers and sellers of sugar arising over differences regarding its chemical analysis."

Prior to 1906, when he entered the United States service, Dr. Browne was research chemist at the Louisiana Sugar Experiment Station for four years in work for which two years of graduate study abroad had specially prepared him. The history of the Bureau of Chemistry favors training and stability in its bureau chiefs. Between 1862 and 1883, six persons held the then nearly personal position of Chemist. From 1883, however, Dr. Harvey W. Wiley ("Old Borax") was continuously in charge until 1912, while the division with a force of five developed to a bureau with a staff of approximately 550. After a ten months' interval under an acting chief, Dr. Carl Lucas Alsberg, chemical biologist in the Bureau of Plant Industry, was taken over as chief and served until 1921, when he went to Leland Stanford University as head of the Food Research Institute. Dr. Walter G. Campbell, a lawyer who had entered the bureau in 1907 as chief inspector in the enforcement of the food and drug act, and who had been assistant chief of the bureau after 1916, carried on the work until Dr. Browne's appointment. Mr. Campbell now has general supervision over all regulatory activities of the Department of Agriculture.

The appointment of Thomas H. MacDonald to the classified position of director of the Bureau of Public Roads in the Department of Agriculture was requested and granted in 1919 on the ground of unique availability. An Office of Public Road Inquiries existed in the Department of Agriculture for many years under the continuous leadership of Martin Dodge. Logan Walter Page assumed charge in 1905 and served until his resignation in 1918. In the meantime the passage of the Federal Aid Road Act in 1916 had made state relations still more crucial. The desiderata which led the Secretary of Agriculture to ask for Mr. MacDonald's appointment to the vacancy under Rule II, Sec. 10, are indicated by the Secretary in his correspondence with

the Civil Service Commission. Having indicated his desire to draw a man from the state service, he said: " . . . . From all the information I could gather, there are two men who stand at the head of the list of state highway engineers. One of these is now receiving a salary of $10,000 per annum and would not be willing to accept a lower figure. The other, Mr. MacDonald, indicated some time ago that he would be willing to accept a salary of $6,000 per annum. I took the matter up immediately with the House Committee on Agriculture, which promptly agreed to increase the salary of the Director of the Bureau from $4,500 to $6,000 . . . . . In the opinion of the Department, he is the only available state highway engineer who combines all the qualities which are so essential to the successful prosecution of the work. It would serve no good purpose, in the circumstances, to announce an examination because it would result in no real competition."

Authority was given by the Commission on April 3, 1919, and Mr. MacDonald has had charge of the Bureau of Public Roads ever since. His active life has been spent in road construction. He graduated in civil engineering from the Iowa State College in 1904 at the age of twenty-three; as a senior he made Iowa roads his thesis subject. He soon became a highway engineer under the Iowa Highway Commission and chief engineer in 1913, holding that position until he went to Washington in 1919.

When the Bureau of Home Economics was established as a separate unit in 1923, the Department of Agriculture requested the Civil Service Commission to authorize the appointment of Dr. Louise Stanley without examination. The request stated (Aug. 14, 1923): "A thorough survey has been made of the leaders in home economics throughout the country and it was found that no one with the training, experience and reputation of Dr. Stanley would accept the position. Under the circumstances, it is believed that it would be inadvisable to hold an xᵊamination for this position." At the time Dr. Stanley was professor and chairman of the department of home economics

in the University of Missouri, with which she had been connected since 1907. The Bureau of Home Economics is the third bureau to have a woman as chief. Moved, evidently, by the pride of sex as well as loyalties of another kind, Mrs. Harriet Taylor Upton, then vice-chairman of the Republican National Executive Committee, wrote to the Secretary of Agriculture on July 30, 1923: "Will you be so good as to tell me just what her position is, something about her, her career, and whether she is a Republican or not? I am interested of course from a political standpoint. If she is a Republican so much the better. If she is not, her achievement in attaining her new position is an incentive to all women and I want to know more about her." To this Secretary Wallace replied simply on August 17: "I am sorry that I am unable to give you any information from the political standpoint."

The first and only director of the National Park Service has occupied the position continuously since the creation of a separate bureau on this subject in 1917. The position is classified, but Stephen Tyng Mather's appointment was requested under the provisions of Rule II, Sec. 10. As a matter of fact, he was already virtually in charge of the parks, having come to Washington in January, 1915, in an exempt position as a special assistant to Secretary of the Interior Lane, with the integration of the hitherto scattered administration of the national parks in view. Mr. Mather's previous experience had been in journalism and in business. Though a descendant of Increase, he had a western background, being born in California in 1867 and graduating from the University of California in 1887. He was a reporter on the New York Sun from that time until 1893, when he became the Chicago manager of the Pacific Coast Borax Company. This led to independent ventures in the borax field after 1903, and he became and is today vice-president of the Thorkildsen-Mather Company and the Sterling Borax Company and president of the Brighton Chemical Company of Pennsylvania, which manufactures borax and boracic acid. As a result came financial means which enabled him, among other things, to contribute a considerable share of the money to buy the

Tioga Road near Lake Tahoe for presentation to the government.

A word should be added regarding the applicability of the ordinary prerogatives and safeguards of the merit system to persons who are appointed under Rule II, Sec. 10. The use of the rule does not put the position in question in the excepted class, and on the other hand the appointee himself acquires no status in the competitive service. Thus the provision for notice in removals[29]—a shadowy thing at the best so far as administrative posts in the classified service are concerned—does not apply at all to an officer appointed without competitive examination under Rule II, Sec. 10.

This fact gains interest from the removal of the chief of the Bureau of Agricultural Economics in 1925—the most recent of the very few instances of the outright removal of bureau heads in recent years. The incident is important and at the risk of digression is told in this connection, although it is not assumed that the situation would have been greatly different even if the rules of the competitive service had been fully applicable. Not only is the Bureau of Agricultural Economics, formed by the successive consolidations of the Office of Farm Management and Farm Economics and the Bureau of Markets and Crop Estimates, one of the largest and newest bureaus in the Department of Agriculture, but also—more than any other unit in the Department—it is concerned with the delicate, relatively controversial questions of costs, prices, and relations to the whole distributive system, as distinguished from physical problems of production. Friction appeared under a prior administration. In 1918 Dr. W. J. Spillman, under whom the economic

[29] Civil Service Rule XII reads: "Section 6 of the act of August 14th, 1912, 37 Stat. L., 555, provides 'That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing . . . . ' " The Attorney General held that the term "classified civil service" was here used "in the more popular sense of the competitive service" (38 *Opinions of the Attorney General*, 181).

studies of the Department had taken form in the Bureau of Plant Industry after 1904, resigned as chief of the Office of Farm Management, after a difference of opinion with Secretary Houston regarding the use of the estimates of wheat-production costs, and doubtless also regarding larger questions of agricultural policy.[30] Dr. H. C. Taylor was appointed without competitive examination under Rule II, Sec. 10.[31]

A reorganization proceeded under his direction, resulting in 1922 in the Bureau of Agricultural Economics, with Dr. Taylor as its head. Trouble came when Secretary Wallace died and, after an interregnum of a year, Secretary Jardine was appointed in 1925. The clue to the friction undoubtedly lay partly in the fact that the Department of Agriculture under Secretary Wallace's lead had given aid and comfort to the original McNary-Haugen bill, which the Administration generally opposed; partly, also, in the inherent likelihood of friction between the Bureau of Agricultural Economics and the Department of Commerce. The direction in which the wind was blowing at the time of the appointment of the new Secretary was indicated in an editorial, following a news-story, that appeared in the Curtis newspapers (the Philadelphia Public Ledger and the New York Evening Post) on January 21, 1925: "The President is looking for a new Secretary of Agriculture. He wants a man untainted by McNary-Haugenism, farm subsidies, price fixing or other forms of Treasury raiding. . . . . If the Administration farm program is to have a Chinaman's chance, the next Secretary of Agriculture must swing the ax and let the heads fall where they may. Bureau cliques have dominated for years. For a generation

[30] After serving as associate editor of the Farm Journal, Dr. Spillman reëntered the Department of Agriculture in 1921 as consulting specialist in farm management.

[31] *Supra*, p. 571, note. Born on a farm in Iowa in 1873, Dr. Taylor completed the course at the Iowa Agricultural College in 1896 and between that time and 1901 pursued graduate studies in economics at the University of Wisconsin under Richard T. Ely, at the London School of Economics, and at the University of Halle and Berlin. He was a member of the Wisconsin faculty, specializing in agricultural economics, from 1901 until he was made chief of the Office of Farm Management in 1919. Since leaving the Department in 1925, Dr. Taylor has been connected, among other things, with the staff of the Institute for Research in Land Economics and Public Utilities.

they have dug in and consolidated." The Director of Scientific Work (Dr. Ball, who subsequently resigned) was aware by now that both he and the head of the Bureau of Agricultural Economics were slated to go, probably no matter who was made Secretary.

Dr. Taylor was glad enough to return to research and teaching, but was not quite ready to move; his pride and a combative spirit, moreover, were stimulated by pressure for his resignation. He stood on his right to an open and explicit statement. It was never given. On June 30, 1925, the Secretary wrote to him: " . . . . . I find it advisable to fill the position by July 15 or August 1. In view of this situation, I am wondering if your plans can be made accordingly." Early in August the Secretary wrote: "I have terminated your appointment as chief of the Bureau of Agricultural Economics, effective August 15, 1925." After his removal Dr. Taylor asked the Secretary to "give out a simple statement of the truth regarding the matter. . . . . This would seem necessary inasmuch as the press has been misinformed from some source other than yourself." The Secretary's assistant replied simply "that the Secretary does not see any necessity of considering issuing a statement as you suggest."

3.

The selection of bureau chiefs from outside the government service directly by competitive examination has been shown to be a distinctly exceptional procedure. Two instances only are offered among the bureau chiefs now in office. Both are very recent and took place because the Civil Service Commission did not care to waive examination under the rule that has just been discussed. During the year 1925 the heads of the Bureau of Agricultural Economics and of the Packers and Stockyards Administration were chosen by what were technically open competitive examinations.

The new head of the Bureau of Agricultural Economics, Thomas P. Cooper, came to the vacancy (created by the removal of Dr. H. C. Taylor) from the position of dean and director of extension in the agricultural college of the University of Kentucky, which he had occupied since 1918. Born in 1881, Mr. Cooper was graduated from the agricultural school of the University of

Minnesota in 1902, and served there as assistant in farm management studies and demonstration farms from 1908 to 1911. He was the director of a private undertaking—the Better Farming Association of North Dakota—in the two succeeding years and then director of the experiment station and of the agricultural extension work in North Dakota until he took over a similar post in Kentucky.

When Dean Cooper came to the Department of Agriculture in 1925, he was merely on leave of absence from Kentucky, and in 1926 he tendered his resignation as chief of the Bureau of Agricultural Economics, effective June 10. Lloyd S. Tenny, assistant chief of the bureau since 1922, was made acting chief. Mr. Tenny originally joined the bureau as a specialist in marketing extension in 1921, gaining a classified civil service status. Previously he had been connected as an executive with the North American Fruit Exchange, the Eastern Fruit and Produce Exchange, and the Florida Growers' and Shippers' League. His basic training was gained in various grades up to that of pomologist in the Bureau of Plant Industry between 1902 and 1910, following his graduation from the University of Rochester in 1902. Mr. Tenny has not been promoted to the position of chief of the Bureau of Agricultural Economics, but is at present merely in an acting capacity. The bureau is therefore classified in this study on the basis of the mode of choice of the last incumbent.

The position of chief of Packers and Stockyards Administration became vacant through the resignation of Chester Morrill to become counsel of the War Finance Corporation. John T. Caine III, was given a temporary appointment on May 19, 1925, pending the certification of eligibles, and in the subsequent examination received a rating of 88.5, being the first on the list. Mr. Caine had studied animal husbandry at the Utah Agricultural College, from which he was graduated in 1903, and for two years subsequently he took work at the Iowa State College. He returned to the Utah State College in 1906 as assistant in animal husbandry, became head of the department in 1907, and extension director in Utah in 1916. Apart from a year's

leave of absence to do extension work in animal husbandry for the United States Department of Agriculture, he held this position until 1920, when he went into commercial live-stock activities in connection with family companies.

The examinations administered to Mr. Cooper and Mr. Caine were of the well-known unassembled type, in which the candidates need not report at any place but merely submit sworn statements regarding their education and experience and also writings of some kind.[32] In both cases 70 per cent was assigned to the element of education and experience. The stipulations here regarding minimum qualifications and the criteria of judgment were slightly different. In the examination for the post of director of the Bureau of Animal Industry it was stated: "Applicants must have graduated from a college or university of recognized standing and must have had at least ten years of responsible administrative experience in positions involving the application of economic principles to agricultural problems. This experience must have been of a nature to demonstrate the applicant's ability to initiate and carry out economic investigations of the broadest kind and successfully to supervise the work of a large body of subordinates. A part of this experience must have been obtained within the past five years. Additional credit will be given for graduate work in agricultural economics." In connection with the position of chief of the Packers and Stockyards Administration, it was provided that "applicants must have graduated from a recognized agricultural college or university and must have had at least ten years of administrative experience in connection with the actual production and marketing, such experience being of a character to evidence executive ability to organize, direct, and manage governmental affairs of the nature and extent described . . . ."

[32] The following proviso is usual, however: "Competitors who attain an eligible average in the examination may be given an oral test to determine their personal characteristics of address, judgment, adaptability, and general fitness for the performance of the duties of this position. The oral test will be given to competitors in the order of their standing and only to such number as the needs of the service require. A competitor who fails to pass the oral test will not be eligible for appointment."

Naturally, too, the requirements regarding publications varied somewhat. In the former case, each candidate was required to submit "copies of publications of which he is the author, or a thesis, dealing with problems in the field of agricultural economics."[33] In the latter instance the conditions were less rigorous, opening the way for the submission, perhaps, of administrative memoranda and the like: "one or more theses, reports, or publications, preferably not more than three and preferably in printed or typewritten form, on subjects directly relating to the marketing of livestock."

In advance of these examinations, both Mr. Cooper and Mr. Caine were given temporary appointments (with the approval of the Civil Service Commission, of course) and served upwards of two months before the examinations closed. One senses a fairly fundamental clash of opinion between the Commission and the departments in this connection. An immediate cause of irritation in the recent situation was the fact that, through no intentional breach of good faith in the Department of Agriculture, some newspaper announcements of Mr. Cooper's "appointment" appeared even before his temporary appointment had been approved. The details of such a *contretemps* can be disregarded; the issue is deeper. The Commission tends to stand for a free field in competitive examinations, discouraging the action of departments "in looking over the field and selecting some individual for the place."[34] A free field is hard to preserve when

[33] Writing on this point in a private letter in reply to an inquiry regarding the particular examinations under consideration, the secretary of the Civil Service Commission remarked that, in a case like the examination for the position of chief of the Bureau of Agricultural Economics, " . . . . we should expect the publications submitted by a successful candidate to cover the technical papers produced in his earlier years, together with later administrative reports containing the results not only of his own research but of the subordinates in his organization."

[34] The quotation is from an unofficial letter of February 8, 1926 from the secretary of the Civil Service Commission to the writer, in which it is said that the Commission "has notified the appointing officials that in the event of any unreasonable delay between the occurrence of a vacancy and a request for certifications of eligibles, a temporary appointment to fill the vacancy will not be approved, unless it is very clearly shown that such delays have not been used for the purpose of looking over the field and selecting some individual for the place."

there is a temporary appointee who is clearly a candidate and presumably the department's own preference. The line of least resistance, and all the amenities of the situation, conspire to turn the examination from a competitive one into a merely qualifying one, scarcely distinguishable from procedure under Rule II, Sec. 10. Men hesitate to compete, and the number of those available is never large. Men are hardly likely to consider such a position as chief of bureau unless they are approached, and if the department has picked a candidate it is not likely to approach others.[35] The grading of the examination, furthermore, is far from automatic. There is, of course, much to be said in favor of thus giving to the department initiative in appointments to positions like that of bureau chief. A non-competitive examination is not without value.[36]

[35] Significantly, Mr. Cooper was the only one who passed the examination that is discussed above. The writer is not informed how many candidates competed.

[36] The remaining bureaus will be treated and some conclusions drawn in the second instalment of this article, which will appear in a later issue.

PUBLIC LAW IN THE STATE COURTS IN 1925-1926

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AMENDMENT OF STATE CONSTITUTIONS

Validity of Procedure. In the summer of 1925 the appellate division of the supreme court of New York held that the City Home Rule Amendment of 1923 had not been legally adopted and was invalid.[1] In the case of Browne v. City of New York[2] the court of appeals reversed this decision and held the amendment valid. The chief ground of attack on the amendment was, it is believed, unique. It may be stated as follows: The New York constitution requires an amendment to be proposed by one legislature, approved by the legislature chosen at the next election of senators, and then ratified by the voters. The City Home Rule Amendment was proposed by the legislature of 1922, approved by that of 1923, and ratified at the polls in 1923. It was an amendment to Article XII. But the legislature of 1922 had also approved an amendment to Article XII, relatively trivial in nature,[3] which had originated in the legislature of 1920. This amendment was ratified in November, 1922, and went into effect in January, 1923, before the second legislative approval of the City Home Rule Amendment. In other words Article XII, which the City Home Rule Amendment changed, was not the same when the amendment passed the legislature for the first time as when it passed the second time. The appellate division held not only that the amendment must be the same when passed by the two legislatures but that the provision amended must also be the same. In an able opinion written by Judge Cardozo the court of appeals rejected this view. The identity of a law does not vary with the variations of the law it displaces, and no authority or

[1] Browne v. City of New York, 213 App. Div. 206, 211 N. Y. Supp. 306, 1925.

[2] 149 N.E. 211, October, 1925. This arose out of a taxpayer's action to restrain the City of New York from spending money to acquire and operate municipal busses under the supposed authority of the City Home Rule Amendment and local laws passed in pursuance of it.

[3] The provision of the constitution of 1894 relating to the suspensive veto by cities of special legislation affecting them had stipulated that when such a law was vetoed by the municipal authorities it should be returned to "the house in which it originated." The amendment of 1922 modified this to require its return to "the clerk of the house in which it originated."

reason appears for implying the requirement that the amended section of the constitution remain the same while the process of amendment is going on. "Such niceties of verbal distinction do not help determine the meaning of a great instrument of government." Stronger reasons than this ought to appear to warrant the court in adopting a construction which would result in invalidating between 35 and 40 legislative acts applicable to cities and some 200 local laws passed by some 30 municipalities. The court of appeals also declined to invalidate the amendment on the ground that it had been entered on the journals of each house of the legislature by title only rather than in full. The enforcement of such a requirement would have invalidated a large number of amendments for a century back. The court held in this case, however, that the City of New York did not have power under the City Home Rule Amendment to enter upon the business of a common carrier by acquiring, maintaining, and operating municipal busses.

A much stricter rule regarding the mandatory character of amending procedure is followed in the Arkansas case of McAdams v. Henley.[4] The requirement here is that the amendment must be entered on the journal of each house with the yeas and nays before it can be submitted for ratification. In the present case the amendment was properly entered in the senate, was amended and entered in the house, and was adopted again by the senate but without entry on the senate journal of the house changes. The entry in the house was thus different from that in the senate and this was held to be fatal to the amendment even after it has been duly ratified by the voters of the state. In following this ultra-strict rule the Arkansas court follows the leading case of Koehler v. Hill,[5] decided in 1883 by the supreme court of Iowa. A more reasonable position is that taken by the supreme court of Pennsylvania in Taylor v. King,[6] following the case of Armstrong v. King[7] commented upon in this REVIEW last year,[8] that a deviation from the procedural requirements respecting the amendment of the constitution may properly be enjoined by the court prior to the ratification of the amendment at the polls, but that such ratification "gives unattackable validity" to such an amendment.

Effect of Proviso Inconsistent with Ballot Title and Purpose of Amendment. An interesting and refreshing instance of judicial legislation occurs

[4] 273 S.W. 355, June, 1925.
[5] 60 Ia. 543, 14 N.W. 738, 15 N.W. 609, 1883.
[6] 130 Atl. 407, June, 1925.
[7] 126 Atl. 263, July, 1924.
[8] See this REVIEW, vol. xix, page 568.

in the case in South Carolina of Hemitsh v. Floyd.[9] An amendment was proposed and duly ratified to exempt from the operation of the pre-existing debt limit the city of Spartanburg. This seems to have been the purpose of the legislature in proposing the amendment, and was certainly the purpose of the voters in ratifying it, since the amendment was so described in the ballot title. The amendment, however, was found to contain a proviso that the city of Spartanburg should not incur indebtedness in excess of fifteen per cent of the value of property assessed for taxation, an amount which had already been reached long before the amendment was proposed. In view of the obvious and absolute inconsistency between this proviso and the rest of the amendment, the court held that the proviso did not become part of the constitution.

DEPARTMENTS OF GOVERNMENT—SEPARATION OF POWERS

Delegation of Legislative Power. An interesting system has developed in South Carolina by which special powers and duties have been conferred by statute upon the legislative delegations from certain counties. A statute of 1925 provided that a chain gang should be established in Fairfield County upon the unanimous written consent of the legislative delegation from that county, that the delegation should share in the selection of the superintendent and guards, should have sole power to dismiss the superintendent without notice, and should approve the purchase of all supplies needed for the project. An act of 1924 authorized county legislative delegations to employ certified public accountants to make a complete audit of all books and records of all county offices and institutions. The act of 1925 was held in Ruff v. Boulware[10] not to delegate legislative power by making the establishment of the chain gang contingent upon the consent of the county legislative delegation. The act was complete when passed by the legislature, and its going into effect could properly be made contingent upon securing the delegation's approval. The same act and the act of 1924, which was sustained in Spartanburg County v. Miller,[11] were attacked as delegating administrative duties to legislative officers. The court felt less sure of its ground in reference to this point. While recognizing that "members of the legislature are elected to make laws, not to execute them," it held that the non-legislative duties conferred by the two acts were reasonably

[9] 126 S.E. 336, January, 1925.
[10] 131 S.E. 29, December, 1925.
[11] 132 S.E. 673, November, 1924.

incidental to the full and effective exercise of legislative power. The duties delegated by the act of 1925 seem to have been supported by earlier precedents,[12] and the duty to secure the auditing of county books was held not substantially different from the duty of a legislative committee which might be authorized to investigate a state institution.

Governor—Power of Pardon for Direct Contempt. In Ex parte Magee[13] the supreme court of New Mexico held that the governor of that state under the constitutional grant of authority to "grant reprieves and pardons, after conviction, for all offenses except treason and in cases of impeachment" enjoys the power to pardon for a direct contempt of a state court. While the power to pardon for an indirect constructive contempt (newspaper criticism of court) had been sustained,[14] there was no state authority for the exercise of the power in cases of direct contempt. In the case of Ex parte Grossman[15] the United States Supreme Court upheld the power of the President to pardon for all criminal contempt, direct and indirect, and the supreme court of New Mexico in the present case follows Chief Justice Taft's reasoning in the Grossman case.

Governor—Subject to Mandamus for Ministerial Act. The governor of Arizona is required to countersign all warrants for payments from the state treasury. He refused to sign the warrant for the payment of salary to the clerk of the state code commission who, was also the president of the state senate, on the ground that the members of the legislature could not hold any other "civil office of profit or trust." Action for mandamus was brought to compel him to sign. The supreme court of Arizona held in Winsor v. Hunt,[16] that the clerical service rendered did not constitute a "civil office of profit or trust" and ordered the mandamus to issue. The state courts are in hopeless conflict on the question whether the governor may be mandamused to perform a ministerial act. The courts of seventeen states hold that he may not, while those of twelve states hold that he may. In other states the courts seem in doubt. It is believed that the weight of reason is with the minority in this conflict and that the Arizona court has adopted the better view.[17]

[12] Elledge v. Wharton, 89 S.C. 113, 71 S.E. 657, 1911; State v. Bowden, 92 S.C. 393, 75 S.E. 866, 1912.

[13] 242 Pac. 332, December, 1925.

[14] State v. Magee Publishing Co., 29 N.W. 455, 224 Pac. 1028, 1924.

[15] 267 U.S. 87, 1925. See comment in this REVIEW, vol. xx, page 85.

[16] 243 Pac. 407, February, 1926.

[17] The authorities and the principles upon which they rest are carefully considered in H. F. Kumm's article, "Mandamus to the Governor in Minnesota," 9 *Minnesota Law Review*, 21, 1924.

Judicial Power—Declaratory Judgments. In the Petition of Kariher,[18] the supreme court of Pennsylvania upheld the Declaratory Judgment Act of 1923 against the customary arguments that rendering such judgments involves the exercise of non-judicial power since the cases are moot cases, that it denies the right of jury trial, and that it violates due process of law. Pennsylvania is the sixth state to sustain this highly desirable legislation.[19] Michigan is the only jurisdiction in which declaratory judgments have been held unconstitutional.[20] Eighteen states provide by statute for the rendering of such judgments. The Wisconsin statute was repealed.

Budget—Validity of Appropriations Unauthorized by Budget Provisions. That the budget provisions of the constitution of Maryland have teeth in them is amply demonstrated by the case of Mayor and City Council v. O'Conor.[21] A statute passed in 1925 attempted to appropriate money from the state treasury for the payment of deficits in certain offices in Baltimore. As this act was neither a budget bill nor a supplementary appropriation bill, it was held to violate Sec. 52 of Article 3 of the Maryland constitution forbidding the appropriation of money except by those two methods. It was held by the court to make no difference that the statute provided that excess fees from certain offices should be put into one account in the state treasury and that appropriations for the deficits should be limited to the amount in this account.

POLITICAL RIGHTS—ELECTIONS

Residence for Voting Purposes. The New York constitution provides that "for purposes of voting no person shall be deemed to have gained or lost a residence, by reason of his presence or absence . . . . while a student of any seminary of learning." In the case of In re Blankford[22] this was held to apply in the case of young men in a Catholic school, St. Andrews-on-the-Hudson, although upon entrance they had taken vows renouncing former homes and family connections, although they

[18] 131 Atl. 265, November, 1925.

[19] The others are: Kansas, State v. Grove, 109 Kans. 619, 201 Pac. 82, 1921; New York, Board of Education v. Van Zandt, 234 N. Y. 644, 138 N.E. 481, 1923; California, Blakeslee v. Wilson, 190 Cal. 478, 213 Pac. 495, 1923; Connecticut, Brannan v. Babcock, 98 Conn. 549, 120 Atl. 150, 1923; Tennessee, Miller v. Miller, 149 Tenn. 463, 261 S.W. 965, 1924.

[20] Anway v. Grand Rapids Ry. Co., 211 Mich. 592, 179 N.W. 350, 1920. See comment on this case in this REVIEW, vol. xv, p. 407.

[21] 128 Atl. 759, April, 1925.

[22] 149 N.E. 415, October, 1925.

had notified the election commissioners of their former domicile of their change of residence, and although they had filed affidavits of intention to reside "indefinitely at St. Andrews." The court found no evidence of intention to reside in the community of Hyde Park in which the school was located, "irrespective of residence in the seminary of learning." In Kemp v. Heebner[23] the Colorado supreme court held that a civilian employee in a United States hospital was not entitled to vote in a general election, even though the United States had not acquired full jurisdiction over the land by cession from the state.

Preferential Voting—Requirement That Voter Indicate Minimum Number of Choices. An Oklahoma statute of 1925 established a system of preferential voting in primaries and provided that where there were one or two candidates for nomination for an office the voter should vote for at least one; that where there were three or four candidates the voter should vote for two, indicating his first and second choices; that where there were more than four candidates the voter should vote for three indicating first, second, and third choices. If more than one candidate was to be nominated the voter should vote for as many as were to be nominated. If the voter did not comply with these rules his ballot was void and could not be counted. In Dove v. Oglesby[24] this is held to be a violation of the provision of the state constitution which stipulates that "no power shall ever interfere to prevent the free exercise of the right of suffrage." The practical result of the statute, said the court, is to say to the voter "unless you vote for one or two who are not your choice, then the vote of the one who is your choice shall not be counted." A writ was accordingly issued enjoining the county election board from holding an election under these provisions of the law.

Primaries—Legal Effect of Voter's Pledge to Support Nominee. Under the Texas primary law the voter indicates on the primary ballot that he is a member of the party chosen and declares "I . . . . pledge myself to support the nominee of this primary." In a primary for the nomination of county clerk, Cunningham was duly nominated over his opponent McDermett. In spite of the primary pledge, McDermett and 25 others who voted in the primary wrote in the name of McDermett on the ballot in the general election, the result being the election of McDermett by a vote of 97 to 78. Without the votes of the 26 who had voted in the primary McDermett would have been defeated. Cunningham contested the election, alleging violation of the primary law upon the part of the

[23] 234 Pac. 1068, April, 1925.
[24] 244 Pac. 798, March, 1926.

26 voters. In Cunningham v. McDermett[25] the Texas court of civil appeals sustained the election of McDermett, holding that it was not the intention of the legislature in setting up the primary pledge to limit the free right of suffrage in the general election.

Corrupt Practices—Candidate's Statement Proposing Salary Reduction. In Owsley v. Hill[26] it is held that the Kentucky statute against bribery in elections is not violated by a statement made during a campaign by a candidate for the office of county attorney proposing that "the fiscal court take from the county attorney's salary $400 per year and place the same to the credit of the road fund." Three justices dissented. The majority took the view that this was not an offer to serve for less than the salary fixed by law, which would have been unlawful, but was a proposal that the legal salary be reduced by those having authority to reduce it. Also the offer was made to the whole body of the voters of the county and not to individuals, and therefore does not constitute a bribe.

Direct Legislation—Referendum Deleting Part of Statute and Leaving Remainder Self-Contradictory. Over a period of years the state of North Dakota had fallen into a somewhat complicated situation with respect to the levying of taxes on bank stock. The solution was sought in the enactment of a statute validating certain levies previously made, the regularity of which had been questioned, and recognizing at the same time certain compromises and settlements which had been worked out by the banks and the taxing authorities. The section validating these compromises and settlements was subjected to a state-wide referendum and was defeated. The question arose whether the rest of the statute remained intact and enforceable. The supreme court of North Dakota in Baird v. Burke County[27] held that it did not. The deleting of the section mentioned left an act substantially different from that intended by the lawmakers and one which would result in injustice. The entire statute was therefore held to have been defeated by the referendum. The court observes: "If through the referendum the very soul and purpose of a statute may be stricken from it, the most pernicious form of log-rolling is invited. It would be a simple thing to load a legislative bill with riders and clauses in order to insure its passage, only to remove them later by referendum."

Referendum—Ninety-day Period Runs from Passage Rather Than from Time of Taking Effect. A workmen's compensation act was passed in

[25] 277 S.W. 218, November, 1925.
[26] 275 S.W. 797, October, 1925.
[27] 205 N.W. 17, August, 1925.

Arizona in 1925 to take effect contingent upon the adoption of a constitutional amendment authorizing it. The amendment was duly adopted. It is held in Alabam's Freight Co. v. Hunt[28] that it is not an unconstitutional delegation of legislative power to pass a statute to go into effect contingent upon the adoption of a constitutional amendment and that the ninety-day period during which the act was subject to referendum ran from the date of passage of the statute rather than from the date of the adoption of the amendment which gave it validity. This period had elapsed long before the amendment was ratified and the act was accordingly no longer subject to referendum.

CIVIL RIGHTS

I. RIGHTS OF PERSONS ACCUSED OF CRIME

Unreasonable Searches and Seizures. The supreme court of Indiana holds in Robinson v. State[29] that the search of the person and automobile of the defendant by officers without a warrant and on mere suspicion that a crime has been committed is an unreasonable search. The fact that the defendant was "a known bootlegger" does not justify search without a warrant. The rule here is more strict than that followed by the Supreme Court of the United States in the Carroll case[30] in which the search of an automobile without a warrant was sustained upon the basis of "probable cause" amounting in substance to the knowledge of the defendant's reputation as a bootlegger.

In these days of prohibition enforcement the question as to the admissability of evidence obtained by officers by unlawful search and seizure is one of great practical importance. The Supreme Court of the United States has held in several cases that evidence thus unlawfully obtained must be excluded if objection to its admission is made in time.[31] The state courts are in conflict on the point, about a dozen holding that such evidence may be admitted and about the same number holding that it may not. Several others have shifted from side to side in different cases. The Colorado case of Mascantonio v. People[32] and the North

[28] 242 Pac. 658, January, 1926.

[29] 149 N.E. 891, December, 1925.

[30] Carroll v. United States, 267 U.S. 132, 1925. See comment on this case in this REVIEW, vol. xx, page 87.

[31] Weeks v. United States, 232 U. S. 383, 1914; Gouled v. United States, 255 U.S. 298, 1921.

[32] 236 Pac. 1019, June, 1925; 205 N.W. 67, August, 1925.

Dakota case of State v. Fahr[33] both discard the federal rule and hold that the evidence obtained by unlawful search and seizure may be admitted. The Colorado court describes its position by saying, "Suffice it to say we have examined all these authorities with diligence and considered them with care, and have endeavored to follow the rule which, in our judgment, leaves the law a sword to the state and a shield to the citizen without converting it into a bomb-proof dugout for their enemies."

Jury Trial—Verdict by Less Than Twelve Jurors. In Branham v. Commonwealth[33] the supreme court of Kentucky holds that the defendant charged with felony and the state may not constitutionally agree to a trial before a jury of seven. Such an agreement had been reached and after his conviction the defendant had repudiated it and appealed. The court's decision was grounded on the presence of a statute allowing such an agreement with respect to the number of jurors "except in cases of felony." In State v. Tiedeman,[34] however, in the absence of any such restrictive statute, the supreme court of South Dakota held that in a prosecution for rape an agreement between the defendant and the state to accept a verdict by eleven jurors, one having been excused by the judge for cause, operated as a waiver of the defendant's right to a trial by a jury of twelve and was not an infringement of his constitutional rights. This comes close to saying that a jury trial may be waived by agreement in cases of felony. The court supported its conclusion by the case of State v. Ross,[35] which had held that the defendant might waive the right to a trial by a jury of twelve in the case of a misdemeanor.

Double Jeopardy. Following the principle in the leading case of United States v. Perez,[36] the supreme court of Michigan holds in People v. Schepps[37] that the defendant is not subjected to double jeopardy by being tried a second time after the first jury is discharged and a mistrial declared by the judge because one of the jurors objects in open court to being locked up and declares that he will be prejudiced by such procedure. The jury in the Perez case was discharged after disagreement and the prisoner was tried again.

[33] 273 S.W. 489, June, 1925.

[34] 207 N.W. 153, February, 1926.

[35] 197 N.W. 234, 1924.

[36] 9 Wheat. 579, 1824.

[37] 203 N.W. 882, May, 1925.

In two cases, People v. McClosky[38] and People v. James,[39] the supreme court of California holds that a statute making it a crime for a felon to own or carry concealed weapons or weapons capable of concealment is not void as subjecting the felon to punishment twice for the same offense, nor as an ex post facto law. The disability attaching to the felon because of his previous conviction of crime is not an added punishment but merely a reasonable exercise of the state's police power to protect the state from acts of violence from those who might most reasonably be expected to commit them.

Due Process of Law—Definiteness in Penal Statute. An Oregon statute making it a felony for a man to fail to support his wife and children is held in State v. Bailey[40] not to deny the defendant due process of law because of want of definiteness. While the statute did not and could not define the exact amount of food, clothing, medical care, etc., which should be deemed necessary to constitute support of one's family, there could be no essential uncertainty resulting in injustice. Nor does the statute delegate legislative power to the judge and jury by permitting them to find upon the fact of non-support. The case is in accord with the authorities in other jurisdictions.

Extradition. It is held in Ex parte Colcord[41] (South Dakota) that a convict who violates his parole and is found in another state without having received permission from the proper authorities to go there is a fugitive from justice and may be extradited.

II. JURY TRIAL IN CIVIL CASES

Requirement of Unanimity. A North Dakota statute of 1923 attempted to authorize the returning of verdicts in civil cases by ten of the twelve jurors. It is held in Power v. Williams[42] that the legislature is without power to modify the number of jurors rendering a verdict. Jury trial in the North Dakota constitution has the same meaning that it has at common law and the meaning which it had in the federal constitution when it was applicable to the Dakota Territory. One of the essential incidents of jury trial as so defined is the unanimous concurrence of twelve jurors in the verdict. Any deviation from this must be made by constitutional amendment and not by legislative enactment.

[38] 244 Pac. 930, January, 1926.
[39] 235 Pac. 81, February, 1925.
[40] 236 Pac. 1053, June, 1925.
[41] 207 N.W. 213, February, 1926.
[42] 205 N.W. 9, August, 1925.

III. IMPRISONMENT FOR DEBT

In 1911 the California legislature passed a law establishing regulations regarding the time of wage payments, and requiring the prompt payment of discharged or quitting employees under penalty of punishment for misdemeanor. This was held in In re Crane[43] to be unconstitutional as inflicting imprisonment for debt on the employer. This was accordingly followed in 1915 by an act which imposed a money forfeiture upon the employer for failure to pay wages within the specified time. In 1919 the legislature enacted a statute imposing the penalty of imprisonment upon employers who, having the means to pay wages due under the law, wilfully refuse to do so with the wrongful intent to "annoy, harass, or oppress, or hinder, or delay, or defraud, the person to whom the indebtedness is due." In Ex parte Oswald[44] this statute is held to be constitutional. It is a legitimate exercise of the state's police power, and the penalty is inflicted upon the guilty employer not because of his indebtedness but because of his malicious interference with the rights of others which amounts, substantially to fraud. It does not, therefore, inflict imprisonment for debt.

An analogous principle is applied by the supreme court of Washington in the case of State v. Williams.[45] Here the statute punishes by imprisonment any contractor who with intent to deprive or defraud the owner receives the price for labor or material for which a lien might be filed upon the property of another, without paying for it. This is held valid as against the allegations that it inflicts imprisonment for debt, denies equal protection of the law, and interferes arbitrarily with liberty of contract. Here again it is the fraudulent act which is penalized rather than the mere indebtedness. There is some conflict in the state courts upon the question of the validity of this type of legislation, but the weight of authority is with the Washington court.[46]

IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

Forfeiture of Lease for Violation of Volstead Act. The Volstead Act provides in Sec. 23 of Title 2 that "Any violation of this title upon any

[43] 26 Cal. App. 22, 145 Pac. 733, 1914.

[44] 244 Pac. 940, February, 1926.

[45] 233 Pac. 285, February, 1925.

[46] In accord with the present case see Pauly v. Keebler, 175 Wis. 428, 185 N.W. 554, 1921; State v. Harris, 134 Minn. 35, 158 N.W. 829, 1916. For contrary doctrine see American Surety Co. v. Bank of Italy, 63 Cal. App. 149, 218 Pac. 466, 1923; People v. Holder, 53 Cal. App. 45, 199 Pac. 832, 1921.

leased premises by the lessee or occupant thereof shall, at the option of the lessor, work a forfeiture of the lease." Although this provision has been enforced in several cases in other jurisdictions, the question whether such forfeiture of a lease impairs the obligation of the lessee's contract or denies him his property without due process of law seems to have arisen for the first time in Pennsylvania in the case of Burke v. Bryant.[47] The forfeiture was sustained, the court holding upon well established principles that the title in question was a legitimate exercise of the police power and not subject to the constitutional objections urged.

Increase in Period of Infancy Not Retroactive. In June, 1921, a Missouri statute became effective which provides that twenty-one years shall be the full age for all persons, thus increasing the period of legal infancy of females from eighteen to twenty-one. The operation of this statute is involved in the case of Nahoski v. St. Louis Electric Term. Ry. Co.[48] In November, 1921, the plaintiff suffered injuries in an accident. She sued the defendant for damages, but verdict for the defendant was rendered in June, 1922. After the trial it developed that she was born in September, 1901, and consequently became of age in September, 1919, and was, therefore, of full age according to the old law at the time her action was brought. She now contends, however, that the act of 1921, by increasing the period of legal infancy, restores her to the status of an infant and should therefore entitle her to a new trial brought by her "next friend." The court holds that it was not the intention of the legislature in enacting the law of 1921 to restore to infancy the persons who had attained their majority under the old law but would not have attained it under the new, and that to hold the act retrospective in its operation would make it unconstitutional as a law impairing the obligation of contracts made by persons whose legal status would thus be changed, as well as a violation of Art. 2, Sec. 15, of the constitution of Missouri forbidding the enactment of law "retrospective in operation." Two earlier cases in Kansas follow the same rule.[49]

THE FOURTEENTH AMENDMENT

I. EQUAL PROTECTION OF THE LAW

Discrimination Against Aliens. An ordinance of the city of Portland required persons selling soft drinks to be licensed under specified

[47] 128 Atl. 821, March, 1925.

[48] 274 S.W. 1025, July, 1925.

[49] Smith v. State, 104 Kans. 629, 180 Pac. 231, 1919; State v. Lyons, 104 Kans. 702, 180 Pac. 802, 1919.

regulations and provided that licenses should not be granted to aliens. The validity of this discriminatory provision came before the supreme court of Oregon in the case of George v. City of Portland[50] and was denied. It was held to be in violation of the clause of the Oregon constitution which provides that "White foreigners who are or may hereafter become residents of this state shall enjoy the same rights with respect to the possession, enjoyment, and descent of property as native-born citizens," and also in violation of the equal protection of the law clause of the Fourteenth Amendment. The court emphasized that the right to sell soft drinks, which unlike intoxicating drinks have not been put under any legal ban, is a property right and not a mere privilege which may be granted or withheld in the discretion of the state or city. In this respect it differs from the business of selling intoxicants, operating a billiard hall, pawn-broking, and peddling, in all of which cases the exclusion of aliens except where protected by treaty has been upheld. A short dissenting opinion took the position that the restrictive provisions of the ordinance should be regarded as means of enforcing the law against the sale of intoxicants and as such may be sustained as a reasonable exercise of the police power.

An interesting case under the Washington Alien Land Law, although not presenting a direct constitutional question, may be briefly noted here. In State v. Kosai,[51] alien Japanese parents owning land before the Alien Land Law went into effect, in anticipation of the operation of the law, executed an absolute gift in the nature of a deed of trust to their nine-year old son, born in this country and therefore an American citizen. The trustees immediately and continuously employed the father as foreman on the ranch in question at a good salary. The state supreme court held, somewhat reluctantly it would seem, that this transfer is not subject to attack under any existing statute. Up to the time the state begins proceedings to escheat the property of an alien he has the undoubted right to transfer good title to any person entitled to it. Obviously the minor son as a citizen of the United States has the right to hold title to land. If subsequently it should appear that the transfer was not absolute or in good faith the courts could deal with that situation upon its merits.

Discrimination against Negroes. A case of very great interest is that of Porter v. Barrett,[52] decided by the supreme court of Michigan, in-

[50] 235 Pac. 681, April, 1925.
[51] 234 Pac. 5, March, 1925.
[52] 206 N.W. 532, December, 1925.

volving the validity of a restrictive covenant running with the land forbidding the sale of property to "a colored person" or to any person "other than those of the Caucasian race." The covenant was attacked in the first place as a violation of the equal protection of the law clause of the Fourteenth Amendment by reason of the race discrimination involved. The court held, soundly enough, that the Fourteenth Amendment forbids only the arbitrary discrimination which may be practised by the state or its subdivisions and does not impose any restrictions upon discrimination practised by private individuals. This view has since been sustained by the Supreme Court of the United States in the case of Corrigan and Curtis v. Buckley decided in May, 1926.[53] The Michigan court, having disposed of the constitutional point raised, turned its attention to the question whether the covenant was void as imposing an undue restraint upon the right of alienation of property. It decided that it was. The restriction here was not a mere restriction upon the occupancy of premises in residential districts by colored people, a restriction which had earlier been held good by the Michigan court in Parmalee v. Morris,[54] but was a restraint upon the right to sell. Furthermore, it was not a restraint upon the right to sell which was limited to a term of years, as had been the case with similar restrictive covenants sustained in other jurisdictions,[55] but clearly specified that the property "shall never be sold or rented to a colored person." There is a certain irony in the fact that what protection the negro enjoys against the sort of race discrimination involved in these covenants comes to him from a rule of real property law dating back to the reign of Edward I[56] rather than from the Fourteenth Amendment which was so obviously intended by its framers to constitute the palladium of his liberties. In this connection it may be interesting to note the much earlier Virginia case of People's Pleasure Park Co. v. Rohleder,[57] in

[53] In this case nothing but the constitutional question arising under the Fourteenth Amendment was before the court. The case came up from the court of appeals of the District of Columbia.

[54] 218 Mich. 625, 188 N.W. 330, 1922.

[55] Queensborough Land Co. v. Cazeaux, 136 La. 724, 67 So. 641, 1915; Koehler v. Rowland, 275 Mo. 573, 205 S.W. 217, 1918. In these cases the restriction ran for only twenty-five years. In Los Angeles Investment Co. v. Gary, 181 Cal. 680, 186 Pac. 596, 1919, a restriction on alienation to one not of the Caucasian race was held void, but the restriction on occupancy was upheld.

[56] The rule finds its origin in the statute Quia Emptores, 18 Edw. I, 235.

[57] 109 Va. 439, 61 S.E. 794, 1908.

which a covenant forbidding the sale or lease of land to negroes was held not to prevent the sale of the property to a corporation composed exclusively of negroes. In Virginia a corporation does not have "color," but it is an entity entirely distinct from the natural persons organizing and composing it. An opposite rule regarding corporations is followed in the alien land laws of California and Oregon.

Discrimination Against Negroes—Segregation Ordinances in Cities. One might have supposed that the question of the validity of municipal ordinances establishing residential districts in which whites and blacks should be segregated had been finally disposed of by the decision of the Supreme Court of the United States in Buchanan v. Warley[59] that such regulations were void. The Buchanan case, which involved the ordinance of Louisville, Kentucky, went essentially upon the ground that the ordinance denied to owners of property in the segregated districts the right to sell that property to those of the race excluded from the particular district and was therefore so arbitrary an interference with liberty of contract and property rights as to amount to a deprivation of property without due process of law. This ruling is not deemed conclusive by the supreme court of Louisiana, however, in its application to a segregation ordinance passed by the city of New Orleans under authority of a Louisiana statute of 1824. This ordinance is sustained in the case of Tyler v. Harmon.[60] The ordinance in question forbids negroes to establish their homes in white communities or districts and forbids white persons to establish their homes in negro communities or districts without the consent of a majority of those of the other race in such community or district. Communities are to be regarded as white or colored in accordance with the numerical predominance of the one or the other race. The Louisiana court declares, "Although we cannot reconcile our judgment in the present case with all that is said in Buchanan v. Warley, the two cases may be distinguished." It then emphasizes that while the Louisville ordinance forbade the sale of the property to members of the excluded race the New Orleans ordinance merely restricts the occupancy of the property. This restriction, it is urged, is similar to and not more objectionable than the numerous zoning regulations whereby municipalities the country over have succeeded in excluding from residence areas various kinds of enterprises and businesses, intrinsically legitimate, which would impair the comfort and

[59] 245 U.S. 60, 1917. [No note 58]
[60] 104 So. 200, March, 1925.

well being of the residents. A concurring opinion states bluntly that, "If the doctrine in Buchanan v. Warley conflict with these views, and that doctrine be adhered to, then that case marks a long step backwards in the march of civilization." It will be interesting to see, if opportunity arises, whether the Supreme Court of the United States will be impressed by the distinction pointed out between the Louisville and New Orleans ordinances.

Discrimination against Negroes—Negro Appropriation of Shriner Ritual Enjoined. A case of interest to members of fraternal orders is that of Burrell v. Michaux[61] decided by the Texas court of civil appeals. The action began in an attempt upon the part of the white "Shriners" (the "Arabia Temple") of Texas to enjoin the negro "Shriners" (the "Doric Temple") from using the names, insignia, emblems, paraphernalia, badges, jewels, constitution, and by-laws of the white organization. The national orders soon came to the support of their local chapters. It was not disputed that the white organization had been in existence for some fifty years and during that time had made use of the distinctive names, ritual, and paraphernalia in dispute. The negro order was established in 1893 and in 1900 was incorporated under an act of Congress. It claimed to have derived its distinctive features, insignia, ceremonials, etc., from Arabia and Egypt. The court found no foundation in fact for this allegation, held that the negro order had borrowed bodily from the white order, had not included in any of their names or labels or badges an indication that the membership was composed of negroes, and granted the relief prayed for. There is plenty of authority to support the protection of the rights which had been invaded. The relief would have been granted quite as readily against a competing white order as against one composed of negroes. The court held that no question of unconstitutional discrimination under the equal protection of the law clause of the Fourteenth Amendment arises, nor have the negroes been denied any privilege or immunity of United States citizenship nor deprived of liberty or property without due process of law.

Miscellaneous Cases Involving Classification. Of the many cases in which the protection of the equal protection of the law clause was invoked only a few merit special comment. The court of appeals of Maryland in Carozza v. Federal Finance and Credit Co.[62] holds that a statute of 1916 which forbade corporations to set up the defense of usury

[61] 273 S.W. 874, April, 1925.

[62] 131 Atl. 332, December, 1925.

does not deny them the equal protection of the law. Usury laws spring from the idea that inequality usually exists between lender and borrower. It is legitimate to recognize that corporations as borrowers are in a class by themselves as compared with natural persons and may be subjected to separate regulations.

The Alabama statute forbidding a wife to make any contract of suretyship for her husband is held in Huntsville Bank and Trust Co. v. Thompson[63] not to deny her the equal protection of the law. It does not create any new disability but merely leaves in existence one originally existing at common law. It was not the intention of the framers of the Fourteenth Amendment to create new rights of persons or property not known to the common law.

In Franchise Motor Freight Association v. Seavey[64] a California statute of 1917 which required all common carriers for hire using the public highways for transportation by automobile, bus, or jitney to secure a certificate of public convenience from the railroad commission upon payment of a fee of $50, but which exempted from these requirements common carriers engaged in the transportation of products or implements of husbandry and other farm necessities, was held to involve arbitrary discrimination amounting to denial of the equal protection of the law. The plea that the purpose of the act was the encouragement of agriculture was unavailing. The court relied heavily upon the leading case of Connolly v. Union Sewer Pipe Co.[65] in which in 1902 the Supreme Court of the United States held the Illinois Anti-trust Act void because it contained the stipulation that "the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser."

The South Carolina supreme court in the case of Sirrine v. State[66] held void as a special act and as a denial of the equal protection of the law a statute of 1924 by which Mrs. Sirrine was allowed to bring suit against the state to recover damages to her automobile caused by the negligence of a uniformed member of the national guard who was driving a military truck. A general law might have been enacted which would have accomplished the desired purpose, but no reason appeared why Mrs. Sirrine should be given rights denied to other property owners similarly injured.

[63] 103 So. 477, March, 1925.
[64] 235 Pac. 1000, April, 1925.
[65] 184 U.S. 540, 1902.
[66] 128 S.E. 172, May, 1925.

An Atlanta ordinance of 1925 revoking all jitney licenses and authorizing the issuance of licenses only to busses carrying seventeen or more passengers and operating upon streets where there are no street cars was held in Schlesinger v. City of Atlanta[67] not to be unduly discriminatory. There is no right in any person to use the public streets. Such use is a mere privilege which may be withheld at pleasure and can be given to one class and denied to another. The court goes somewhat further than necessary, and perhaps further than it seriously intended, when it declares: "The due process and equal protection clauses of our federal and state constitutions are applicable to rights alone, and have no reference to mere privileges which may be bestowed or withheld by the state or municipality." Certainly the equal protection of the law clause would prevent wholly arbitrary and capricious discrimination in the granting of mere privileges.

II. DUE PROCESS OF LAW—THE POLICE POWER

The Sterilization of Mental Defectives. In the Michigan case of Smith v. Command[68] and in the Virginia case of Buck v. Bell,[69] statutes authorizing the sterilization of mental defectives were held constitutional. The Virginia case is the stronger because the statute of that state enacted in 1924 subjected to sterilization only the inmates of state institutions. Cases decided earlier in New Jersey,[70] New York,[71] and Michigan[72] had held that such restricted application of the law created an unreasonable classification amounting to a denial of the equal protection of the law. To cure this defect the Michigan statute enacted in 1923 was made applicable to all mental defectives in the state, under proper procedure, some twenty thousand in all and eight times as many as could be confined at present in institutions. The statute in this form was upheld with the exception of the single provisions applying the law only to mental defectives unable to support any children they might have, which was held to involve unreasonable classification. In a convincing opinion the court declared the statute to be a reasonable and proper exercise of the police power of the state, not to involve arbitrary classifi-

[67] 129 S.E. 861, September, 1925.

[68] 204, N.W. 140, June, 1925.

[69] 130 S.E. 516, November, 1925.

[70] Smith v. Board of Examiners of Feeble-minded, etc. 85 N.J.L. 46, 88 Atl. 963, 1913.

[71] Osborn v. Thompson, 103 Misc. Rep. 23, 169 N.Y. Supp. 638, affirmed in 185 App. Div. 902, 171 N.Y. Supp. 1094, 1918.

[72] Haynes v. Judge, 201 Mich. 138, 166 N.W. 938, 1918.

cation (barring the clause mentioned), and not depriving persons of liberty without due process of law, in view of the procedural requirements set up. The argument that sterilization amounts to a cruel and unusual punishment is disposed of by the statement that it is not a punishment at all, but like compulsory vaccination is entirely non-punitive. The Washington statute providing sterilization as a punishment for rape was sustained in State v. Feilen[73] under a constitutional clause forbidding cruel but not unusual punishments. Two federal district courts have invalidated laws in Iowa[74] and Nevada[75] applicable to rapists and habitual criminals as inflicting cruel and unusal punishments and as bills of attainder. In Indiana[76] a sterilization law applicable to mental defectives was held wanting in due process because no provision was made for a public hearing in each case. In addition to Washington, Michigan, and Virginia, sterilization laws which have not been attacked constitutionally seem to be in force in Connecticut, Wisconsin, North Dakota, South Dakota, and Kansas. The two present cases seem to be the first ones in which the whole constitutional question of eugenical sterilization has been broadly considered.[77]

Enticing Servant Away from Employment Made Unlawful. Section 125 of the Georgia penal code of 1910 making it a misdemeanor for any person "by offering higher wages or in any other way, to entice, persuade, or decoy, ... any servant, cropper, or farm laborer, whether under a written or parol contract, after he shall have actually entered the service of his employer, to leave his employer during the term of service, knowing that said servant, cropper, or farm laborer was so employed" is held in Rhoden v. State[78] not to amount to a denial of due process of law. This places no legal restriction upon the freedom of action of the employee, but merely upon those who seek to persuade him to break his contract of employment.

Requirement of Curtains on Locomotive Cabs. A Wisconsin statute of 1923 and an order of the railroad commission issued in pursuance of it requiring adequate curtains on all locomotive cabs is held in Railway

[73] 70 Wash. 65, 126 Pac. 75, 1912.

[74] Davis v. Berry, 216 Fed. 413, 1914.

[75] Mickle v. Heinrichs, 262 Fed. 687, 1918.

[76] Williams v. Smith, 190 Ind. 526, 131 N.E. 2, 1921. This point was also urged by the court in Davis v. Berry, supra.

[77] An excellent survey of this whole problem is found in the article by Professor Burke Shartel, "Sterilization of Mental Defectives," 24 *Michigan Law Review*, 1, 1925.

[78] 129 S.E. 640, September, 1925.

Company v. Railroad Commission[79] to be a reasonable exercise of the police power of the state and not an unconstitutional interference with interstate commerce in its application to locomotives engaged in interstate commerce in the state.

Minimum Wage Statute for Women and Minors. Upon the authority of the decision of the United States Supreme Court in Adkins v. Children's Hospital,[80] the supreme court of Kansas in Topeka Laundry Co. v. Court of Industrial Relations[81] held invalid the Kansas minimum wage law applicable to women and children. This was before the decision of the United States Supreme Court[82] holding without opinion that the Arizona statute was void under the rule of the Adkins case. A vigorous dissenting opinion expressed the view that the Kansas court ought to use its own judgment "rather than be controlled by a decision of another jurisdiction, which at best is persuasive rather than authoritative."

Test of Good Moral Character for Real Estate Brokers. In the Kentucky case of Rawles v. Jenkins[83] it is held that the rights guaranteed by the Kentucky constitution of "enjoying and defending their lives and liberties" and of "acquiring and protecting property" are violated by a statute passed in 1924 which prescribes moral qualifications for real estate brokers and salesmen and confides to a commission the power to withhold or revoke a license if, in its opinion, the applicant or licensee does not possess such qualifications. A similar statute had been sustained in California[84] upon the general principle of the "blue sky" legislation, but this was not convincing to the Kentucky court.

New York Ku Klux Klan Case—Regulation of Oath-bound Societies. The New York statute of 1923 requiring all societies having a membership oath, incorporated or unincorporated, and having twenty members or more, excepting labor organizations and benevolent orders, to file with the secretary of state a sworn copy of their by-laws, regulations, membership oath, roster of membership, and list of officers is held in People v. Zimmerman[85] to be constitutional against the allegations of denial of due process of law and equal protection of the law. The court

[79] 205 N.W. 932, November, 1925.
[80] 261 U.S. 525, 1923. For comment on this case see this REVIEW, vol. xviii, page 54.
[81] 237 Pac. 1041, July, 1925.
[82] Murphey v. Sardell, Oct. 19, 1925. 269 U. S. ——. Justice Brandeis dissented.
[83] 279 S.W. 350, November, 1925.
[84] Riley v. Chambers, 181 Cal. 589, 185 Pac. 855, 1919.
[85] 150 N.E. 497, January, 1926.

regarded the statute as a reasonable exercise of the state's police power and deemed the classification involved reasonable.

Regulation of Auctions of Jewelry. That the business of selling jewelry at auction may be subjected to strict regulations for the purpose of protecting the public against fraud is held in Ex parte West,[86] a California case, and Holsman v. Thomas,[87] decided in Ohio. The Cleveland ordinance in question limits the time during which goods may be auctioned to sixty days per year, requires previous residence for one year upon the part of the auctioneer, and requires that he must have had a regular stock of jewelry for six months. The Oakland ordinance restricts the time to thirty days, forbids the bringing in of special stock for the auction, requires the filing of a complete list with the city authorities of all the goods to be auctioned and their value, and forbids the holding of auctions between six in the evening and eight in the morning. Both ordinances were held reasonable exercises of the police power and free from arbitrary discrimination.

TAXATION—PUBLIC PURPOSE

Old Age Assistance. In 1923 a statute was enacted in Pennsylvania providing for the relief of persons who had attained the age of 70 or more whose financial circumstances in property or income were below a fixed sum. Such persons must show prior citizenship and residence in the state for fifteen years. Their property must not exceed $3,000. The maximum amount of relief was fixed at one dollar per day. In Busser v. Snyder[88] the supreme court of Pennsylvania held this statute void as in conflict with the clause of the state constitution providing "No appropriation, except for pensions, or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association." The court took the position that the act could not be sustained as a poor law, since a person with property of $3,000 could hardly be called a pauper. There seemed no other basis upon which it could be saved from the prohibition of the provision quoted above.

[86] 243 Pac. 55, December, 1925.
[87] 147 N.E. 750, April, 1925.
[88] 128 Atl. 80, February, 1925.

AMERICAN GOVERNMENT AND POLITICS

FIRST SESSION OF THE SIXTY-NINTH CONGRESS
December 7, 1925, to July 3, 1926[1]

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The regular long session of the 69th Congress met in December to harvest the legislative fruits of the Republican victory of 1924, then almost too well dried by thirteen months' standing and a little damaged by some bad weather in the special session of the Senate. The spirit of quiet husbandry, almost bereft of partisanship, was signalized by the enactment of the Revenue Act of February 26, 1926, which at last virtually realized the oft-frustrated "Mellon plan" of tax revision. Within two months, however, the propitious, if hardly exciting, skies that looked down on these early scenes were darkened, and an almost dramatic transition from sunshine to the shadow of farm-relief perplexities and the distant thunder of the oncoming primaries invested the session with other points of interest besides its industry and output. The session was unusually busy throughout. In 158 days of actual meetings, it ground out 986 public and private laws and resolutions, as against 393, 152, 121, and 109 pieces of legislation in the first sessions of the 68th, 67th, 66th and 65th Congresses, respectively.[2]

Party Membership. The Republican majority in the House had not been changed in the by-elections by which six vacancies caused by death were filled. The presidential system attaches little significance to such contests, and those of 1925 revealed no defined trend in either direction.

[1] For previous notes on the work of Congress, prepared by Lindsay Rogers, see AMERICAN POLITICAL SCIENCE REVIEW, vol. 13, p. 251; vol. 14, pp. 74, 659; vol. 15, p. 366; vol. 16, p. 41; vol. 18, p. 79; vol. 19, p. 761.

[2] A total of 13,909 bills and resolutions were introduced in the House during the first session of the 69th Congress, as against 10,481, 9,775, 11,419, and 6,873 in the first sessions of the 68th, 67th, 66th, and 65th Congresses. In the House of Representatives, according to the tally clerk, there were 1,495 committee reports, of which 615 were on the private calendar. At the time of adjournment, 1,321 of the bills reported had been acted upon and 174 were pending.

When Congress convened the Republicans in the House numbered 247, the Democrats 183, the Farmer Labor members 3; and there was one Socialist (Mr. Berger) and one independent elected with Socialist endorsement (Mr. LaGuardia of New York). A Republican member, John W. Langley of the 10th Kentucky district, subsequently resigned after his conviction on grounds of conspiracy in connection with the prohibition laws;[3] but on the other hand a Democrat, John E. Raker of the 2nd California district, died without actively participating in the work of the session. Several contests were settled in favor of the incumbents under the roll at the time of organization.

In the Senate, three of the four vacancies which death brought during 1925 were filled by appointment, with the Republicans gaining a seat in Indiana. In a special election in Wisconsin in September, Robert M. LaFollette was chosen in his father's place, receiving 55.8 per cent of the votes in the Republican primary and 67.5 per cent of the vote in the special election itself. Doubt arose as to the right of the governor of North Dakota to appoint Gerald P. Nye to take the place of E. F. Ladd. The question was of a constitutional nature, but it gained interest because Governor Sorlie, although elected as a Republican, had been chosen with Non-Partizan League endorsement. The legal issue turned on the question whether the language of the Seventeenth Amendment "that the legislature of any state may empower the executive thereof to make temporary appointment...." had been met by a provision in a North Dakota law of 1917 (ch. 249) that "all vacancies...shall be filled by appointment... in State and district offices by the governor." The immediate question was whether a senator is a state officer within the meaning of this phrase. On January 7, 1926, the Senate committee on privileges and elections reported adversely to Mr. Nye (S. Res. 104, p. 1256).[4] After debate on five successive days, however, a motion to reverse the recommendation of the committee was carried on January 12 by 41 (26 Democrats,

[3] A special committee on this case reported on Dec. 22 (*Congressional Record*, p. 943) recommending no action while Mr. Langley still had a chance of appeal, "in accordance with precedent that final action shall not be taken until a criminal charge has been disposed of in the court of last resort." Mr. Langley resigned on Jan. 11, after the Supreme Court had denied his application for a writ (p. 1491).

[4] The reference here (as always when pages are given without further citation) is to the *Congressional Record*, 69th Congress, 1st Session, vol. 67. The Nye case is discussed at pp. 1256-1276, 1314-1324, 1356-1369, 1445-1471, 1525-1532. A brief in behalf of Mr. Nye is reprinted at pp. 1273-1275.

14 Republicans, 1 Farmer Labor) to 39 (31 Republicans, 8 Democrats), and Mr. Nye was at once seated (p. 1531). On the other hand, the Senate sustained a nine-to-one recommendation from the committee in the contest between Smith Brookhart and Daniel F. Steck for the Iowa seat, and on April 12 (p. 7144) seated the Democrat in place of Mr. Brookhart by a vote of 45 (16 Republicans, 29 Democrats) to 41 (31 Republicans, 9 Democrats, 1 Farmer Labor). The nominal party grouping in the Senate then stood: Republicans, 55; Democrats, 40; Farmer Labor, 1.

The Organization of Congress. With these majorities, the Republicans built their machine without the difficulties that had embarrassed them in the previous Congress. The question of the speakership had been settled at the caucus of the Republican members-elect on February 27, 1925, Nicholas Longworth of Ohio being nominated by a vote of 140 to 85 over Martin B. Madden of Illinois. The caucus of Democratic members-elect on the following day nominated Finis J. Garrett of Tennessee, with the understanding that he would succeed himself as floor leader. On December 7, Mr. Longworth was formally elected speaker, receiving 229 votes to 173 for F. J. Garrett, and 3 for Henry A. Cooper, dean of the Wisconsin delegation.

In providing for party assignments to standing committees the established methods were followed. The Republican caucus on February 27, 1925, had authorized a committee on committees of one member from each state, chosen by the delegation thereof and possessing a voting power proportionate to its size. This committee had taken up its task immediately after March 5. The Democratic caucus of February 28 had nominated nine members for reëlection to the minority places on the ways and means committee and had authorized them to act as a committee on committees. The ratio for the division of places on the major committees was fixed at 13 to 8, instead of 12 to 9. On December 7, by formal resolution, seven of the committees were elected, in the face of a little twitting from the Democratic side on the incompleteness of the action. The choice of the standing committees was completed by the perfunctory adoption of a further resolution on December 16 (H. Res. 50, p. 534).

The central working organization, built afresh in the House and largely carried over in the continuously organized Senate, stood as follows:

Senate

Republican	*Democratic*
Moses (N. H.) president pro tem.	Robinson (Ark.) floor leader

Curtis (Kan.), floor leader	Harrison (Miss.), assistant floor leader
Watson (Ind.), assistant floor leader	Gerry (R. I.), whip
Jones, W. L. (Wash.), whip	Steering Committee
Steering Committee	Robinson (Ark.)
Wadsworth (N. Y.), chairman	Gerry (R. I.)
Butler (Mass.)	Harrison (Miss.)
Dale (Vt.)	Broussard (La.)
Gooding (Idaho)	Caraway (Ark.)
Norbeck (S. D.)	Heflin (Ala.)
Pepper (Pa.)	Jones, A. A. (N. M.)
Willis (Ohio)	Kendrick (Wyo.)
	Pitman (Nev.)
	Sheppard (Tex.)
	Simmons (N. C.)
	Swanson (Va.)
	Walsh (Mont.)

House of Representatives

Republican	*Democratic*
Longworth (Ohio), speaker	Garrett (Tenn.), floor leader
Tilson (Conn.), floor Leader	Oldfield (Ark.), whip
Vestal (Ind.), whip	
Snell (N. Y.), chairman of the Rules Committee	
Steering Committee	No party agency corresponding to the steering committee exists.
Tilson (Conn.)	
Darrow (Pa.)	
Denison (Ill.)	
Magee (N. Y.)	
Newton (Minn.)	
Sinnott (Ore.)	
Tincher (Kan.)	
Treadway (Mass.)	
Vincent (Mich.)	

Procedure in the House. Almost the first act of the House of Representatives was to rescind the discharge rule which the so-called progressive bloc had managed to extract from the reluctant Republicans

in the early days of the deadlocked 68th Congress.[5] On December 7 (p. 9) at the instance of the chairman of the committee on rules, the procedure for the discharge of committees (subd. 4 of Rule XXVII) was changed to provide that a motion might be entered on a "calendar of motions to instruct committees," if signed by a majority of all the members (entailing 218 signatures instead of 150), whence such a motion might be called on the third Monday of each month if seconded then by a majority of all the members. If the motion was then approved by a majority of all the members, the committee in question would be required to report within fifteen days. To the argument that this entails obtaining a majority of the elected members three times, whereas appropriations of many millions could be passed by a majority of a bare quorum, Chairman Snell replied that their enactment was the "normal and logical thing" but the discharge of a committee was a "revolutionary and radical thing," which, like suspending the rules, should require an extraordinary majority (p. 13). To Mr. Garrett's contention that it would "absolutely destroy the remotest possibility of discharging any committee in this House," Mr. Snell said further: "I admit that it is not an easy rule to work, and no conscientious, responsible legislator could stand on this floor and advocate one that was . . . ." (p. 15). The resolution carrying the new provision—the only change of importance in the rules during the session—was adopted by 208 (including 43 Republicans who had voted for the discharge rule in the 68th Congress) to 196 (pp. 16-17). Mr. Snell sounded the keynote of the majority leaders when he said: "By what we do we will be judged and not how we do it..... The responsibility is ours and we accept it" (p. 15).[6]

Leadership in the House was integrated and neatly effective in so far as it knew its mind; speaker, floor leader, and steering committee merged almost indistinguishably, with the chairman of the rules committee as an instrument. Although the white light which is supposed

[5] See this REVIEW, Vol. 19, p. 764 (November, 1925).

[6] The "calendar of motions to instruct committees" remained vacant through the session. It may be added in the same general connection, however, that on April 8 (pp. 6887-6897) an attempt was made by Mr. Barbour (Republican, Cal.) to get a vote on a motion to discharge the Census Committee from consideration of the bill for the reapportionment of representation (H. R. 111). He sought to justify the propriety of this motion by urging that the Constitution ordained a decennial reapportionment and that the motion was a matter of "high constitutional privilege." The Speaker ruled against him on this point and was sustained by a vote of 87 to 265 (p. 6897).

to beat upon a throne hardly illuminates the steering committee (whose membership, indeed, could scarcely be learned from reading the daily press), the committee was referred to constantly and its influence was for the most part taken as a matter of course, although sometimes with a mild note of criticism.[7] Typical of the way in which the machinery of leadership was regarded in practice was Mr. Collier's question on June 4: "At the request of several gentlemen on this side, I wish to ask the gentleman from Connecticut if he has anything to give out as to the work for next week?" To this Mr. Tilson replied: "The program for next week is not entirely made up. I hope to get it before the day is over and will certainly have it up tomorrow at the usual time." (p. 10661).

The mediating rôle of the committee chairmen was carefully respected.[8] The custom whereby the chairman and ranking minority member of a committee control the division of equal amounts of time was of course followed, but the chairman of the rules committee illustrated the non-partisanship characteristic of so much Congressional legislation when, in presenting the special rule for twelve hours of general debate on the rivers and harbors bill, he remarked, "In looking over the committee I find that the chairman and the ranking member of the minority are both in favor of the bill, but I have taken this matter up with them...," and he added that each had agreed to reassign control of half of his time to a member of the committee of his party who opposed the bill (May 22, p. 9809).

The reporting of special rules for the consideration of particular

[7] Regarding the majority steering committee, Mr. Pou, the ranking minority member of the rules committee, remarked incidentally on June 18: "Now, Mr. Speaker, it is a matter of common knowledge that the business of this House is controlled by the Republican steering committee. I do not criticize this committee, but I cannot approve the system. It cannot be denied that the steering committee is all powerful. It can and does forbid the consideration of any measure to which a majority of the steering committee is opposed. This may be a surprising statement to some, but the steering committee is more powerful than any of the regular constituted committees of this House. It is more powerful than the committee on rules, because the majority of the committee on rules will not report any special rule in defiance of the mandate of the steering committee, which is the great super-committee of this House, with power to kill and to make alive" (p. 11528.)

[8] Mr. Blanton, complaining that he could not get District of Columbia business acted upon in the absence of the chairman of the committee on District affairs, said of the majority floor leader: "He says that he deals only with the chairman of his committees, he recognizes only the chairmen of his committees to arrange and take up business—a silly, ridiculous excuse" (Feb. 20, p. 4022).

bills was an important but not outstanding phase of procedure in the House. Against nineteen such rules in the long session of the 68th Congress,[9] sixteen resolutions for special orders were reported by the rules committee and agreed to in the first session of the 69th Congress. In addition, at least seven proposed special rules for consideration of bills were reported by the rules committee, but not adopted; and many others were asked. With the exception of the farm-relief bills and the rivers and harbors bill, moreover, the big troublesome items of legislation of the session were handled without resort to special rules.[10] This did not imply opposition to the device; in the sixteen instances of its exercise hardly a word of criticism was directed at the method itself. Thirteen of the rules specified a maximum period of general debate in committee of the whole (varying from one to twelve hours), to be followed by the reading of the bill for amendment under the five minute rule, after which the previous question was to be considered as ordered on the bill and the amendments adopted in committee of the whole.

The most interesting rule of the session, of course, was that adopted on May 4 (H. Res. 249, H. Rept. 1051, p. 8624) to solve the dilemma of the committee on agriculture, which wanted the House to consider farm-relief legislation but was unable or unwilling to give a majority to any one of the three alternative bills that sought to meet the problem of the agricultural surpluses.[11] The rule provided for the reporting of all three bills and for not more than four days of general debate, with one-third of the time to be controlled by Mr. Haugen (chairman of the committee), one-third by Mr. Tincher (a Republican colleague whose bill had the support of the Administration), and one-third by Mr. Aswell, ranking minority member; and with the further provision that at the end either the Tincher bill or the Aswell bill could be offered as a substitute for the Haugen bill. "I would not," said the chairman of the rules committee, "want this to go down as a precedent... but I believe it is as good a rule as you could have to meet the conditions confronting us..." (p. 8622).

[9] See *Political Science Quarterly*, Supplement, Record of Political Events, March, 1925, pp. 69-70.

[10] The device of moving to suspend the rules and pass a bill (two-thirds being required) was used in the passage of the public buildings bill (H. R. 6559, Feb. 15, p. 3723), the bill for the deportation of certain aliens (H. R. 12444, June 7, p. 10820), and a bill to regulate practice before the Patent Office (H. R. 10735, June 7, p. 10821).

[11] *Infra*, p. 615.

Procedure in the Senate. Senate procedure gave even franker recognition to the existence of a majority steering committee than in the House, and as a party organ the committee was relatively more important in the upper chamber. On April 30, for example, Senator Wadsworth, signing himself "chairman," addressed a letter to all the senators which opened: "I am instructed by the committee on order of business of the Republican Conference to inform you that the committee at a meeting held on Thursday, April 29, made a careful examination of the bills now pending upon the Senate calendar and decided to suggest the wisdom of taking up and disposing of the following measures. ..."[12] Ten items on the Senate calendar were then specifically mentioned, with the stipulation at the end, "it should be understood that appropriation acts shall have the right of way." Ostensibly, at least, "the steering committee cannot consider what bills will be taken up until the bills are reported."[13] In the work of the Senate committee, unlike that of the House, there has been the appearance of separation from the functions of floor leadership.[14]

On January 25, the Senate's cloture rule (Rule XXII) was successfully invoked for the second time since its adoption in 1917, and again on a question of foreign policy. The intractability of Senator Blease of South Carolina in the debate on adherence to the World Court created the situation which on January 22 (p. 2268) led to the filing of the motion "that debate on the pending measure, S. Res. 5, be brought to a close."[15] It was signed by forty-eight members, three times the

[12] *United States Daily*, May 1, 1926, p. 1.

[13] Senator Curtis, majority leader, remarked on May 13 (p. 9285): "Mr. President, the steering committee cannot consider what bills will be taken up until the bills are reported and are on the calendar. The steering committee cannot go to a committee and say, "You have to report out this bill. After bills get upon the calendar the steering committee is ready to act upon any bill in which any senator is interested, if he will appear before it."

[14] Illustrations of this were frequent in the remarks of Senator Curtis, majority leader. On June 1 (p. 10366) he announced for the information of Senator Copeland: "Mr. President, as I promised the senator, when the steering committee met last week I presented his request, together with the requests of a number of other senators. The chairman of the steering committee is arranging the program now and hopes to call the steering committee together within a day or two and arrange a program for the rest of the session. The senator's bill was presented to the committee by me as one of the bills to be taken up by the committee with a view to putting it on the list. I cannot say, of course, what they will do."

[15] Senator Pat Harrison, assistant Democratic floor leader, after remarking "such tense moments as this are unwelcome of course to all senators," said on Jan-

number necessary. The automatic operation of the rule brought the motion to a vote one hour after opening on January 25 (p. 2343), when it was adopted by a vote of 68 (37 Republicans, 31 Democrats) to 26 (18 Republicans, 7 Democrats, and one Farmer Labor member), with only two senators absent. Under it the question of adherence to the World Court was disposed of affirmatively two days later. An attempt later in the session to employ the cloture rule in connection with the migratory bird bill (S. 2607) failed to obtain the necessary two-thirds vote. After this bill had been unfinished business for upwards of fourteen days, a cloture motion was circulated by Senators McKellar and Norbeck toward the close of the meeting on May 28 and quickly obtained the sixteen signatures required by the rule. It was defeated on June 1 (p. 10358), however, receiving 46 votes (36 Republicans, 10 Democrats) to 33 in opposition (8 Republicans, 24 Democrats, one Farmer Labor). Vague references to the possibility of cloture in connection with other bills—as, for example, in Senator McNary's complaint on June 5 (p. 10732) of filibustering on the federal aid road bill—did not even reach the stage of a motion.

The broader question of restriction of debate in the Senate, so widely advertised by the Vice President, not only was raised through the session in occasional remarks aimed at the chair (for example, in some characteristic raillery by Senator Harrison on December 10 (p. 238), but also was involved in some resolutions to amend the rules which were introduced, among others, by Senators W. L. Jones (pp. 92, 235, 8492), Fess (p. 93), and Underwood. The latter's proposal (S. Res. 225, introduced May 17) to permit the previous question in connection with revenue bills and general appropriation bills elicited an interesting but inconclusive debate on June 4 (pp. 10639-10656).[16]

The Rôle of the Blocs. The elections of 1924 practically restored the balance that existed prior to 1922, if the groups involved had the

uary 22 (p. 2272): "I hope the senator from South Carolina will withdraw his objection to the agreement offered by the senator from Arkansas," referring to the arrangement which the minority leader had concluded with Senator Borah, head of the opposition to the World Court, as well as chairman of the Committee on Foreign Relations, for a final vote on February 10. Senator Harrison urged his colleague not to give aid and comfort to Vice President Dawes' proposal for restriction of debate in the Senate.

[16] The proposal was then opposed especially by Senators Robinson, Heflin, and Reed of Missouri. On the relation of its procedure to the Senate's place in our political institutions, see Lindsay Rogers, *The United States Senate* (New York, Knopf, 1926).

will to use their power. The progressive faction was hardly weaker in absolute numbers, and the disciplinary measures threatened by the Republican leaders did not go to the grim lengths bruited at the time of the February and March caucuses.[17] Its leverage was greatly impeded, however, not only by the increased Republican majorities but also by the fact that, with new-found caution, the Democrats tended to withdraw the fulcrum altogether. The situation as it stood in the early part of the session was illustrated on February 12 (p. 3605) when Senator Norris pleaded vainly with the Democrats to support his proposed amendment to the revenue bill providing for a 25 per cent instead of 20 per cent surtax maximum: "Now is their chance to get it—right now. With the Democratic party over there united for a 25 per cent maximum on incomes in excess of $1,000,000, I guarantee them enough votes over here to put it over right now, on this coming roll call." Only ten Democrats responded. Collaboration increased, however, as the session advanced.

References to a farm bloc as such, especially during the later part of the session, were incessant in the press and frequent even in remarks made in Congress. In so far as a farm bloc was active, however, it seemed less definitely organized than the bi-partisan group, with its sub-committees and meetings, which was integrated around the lobby of the American Farm Bureau Federation in the 67th Congress.[18] The center of gravity had apparently moved somewhat eastward along the Corn Belt. The spearhead of the immediate movement for agricultural legislation in the 69th Congress was the North Central States Agricultural Conference, organized at Des Moines on January 28, 1926, as a result of an impetus that had originated in the "All-Iowa" conference on December 29, shortly after President Coolidge elaborated before the American Farm Bureau Federation convention the remarks

[17] In the House, despite the resolution adopted by the Republican committee on committees in the spring,". . . that in the selection of the committees we recognize as Republicans only those who supported the Republican national ticket and platform in the last campaign," the assignments finally completed on December 15 treated the LaFollette supporters as Republicans, although shoving them to the tail-ends of relatively unimportant committees. In the Senate, the leaders retreated even further. On December 14, for example, the Republican committee on committees—previously deadlocked on the issue—decided to assign young Senator LaFollette as a Republican, although he wrote (December 15) declaring his "allegiance to the progressive principles and policies . . . . of the late Robert M. LaFollette."

[18] See Phillips Bradley, "The Farm Bloc," *Journal of Social Forces*, vol. 3, pp. 714-718 (May, 1925).

in his message that counseled a patient confidence in natural economic laws. The North Central States Agricultural Conference (generally called the Corn Belt Conference) put the lobbying work in charge of an executive committee of twenty-two representing the eleven participating states, Iowa, Illinois, Michigan, Wisconsin, Ohio, Indiana, Minnesota, Missouri, Kansas, Nebraska, and South Dakota. George N. Peek, president of the Moline Plow Company, was chairman of this committee. Vice President Dawes was understood to have given its plan his approval,[19] as did Senator Watson of Indiana, the assistant floor leader, at whom Senator Pat Harrison jibed for "shifting his position from clinging to Cal and standing by Andy to saving himself by grabbing to Charlie" (June 8, p. 10883).

Pressure on Congress began about March 1, and was strong enough to shift the whole legislative scene and to compel open consideration and a vote in both houses. Again, however, agriculture revealed its inability to maintain a united front when facing innovative legislation with a sectional turn.[20] The House committee on agriculture was in continuous session from March 4, when the North Central States Agricultural Conference appeared, until April 23.[21] The Administration

[19] The student of human ambition may think it unnecessary to go beyond an obvious explanation that can be offered for Mr. Dawes' attitude. The student of sectionalism, however, will possibly find it an illustration of how the cumulative effects of five years of phenomenally frequent country bank failures command attention not only from those high in the agricultural implement industry but also in the sanhedrin of Middle Western finance. For one reason or another, certainly, the Vice President was willing to risk giving aid and comfort to the twittering political peewits which in 1924 were to have no refuge from his gun. It was said later that Mr. Dawes weakened in his support of the McNary-Haugen bill when preferential treatment of cotton in connection with a postponement of the collection of the equalization fee was introduced into the draft of the bill (press of June 23). Regarding sectional unity on the whole proposal, Senator Norris observed: ". . . . we have now reached an interesting phase of this history of legislation for farm relief, when the farmers of the West and the business men of the West presented a united front, or as near united as I have ever seen in all my service on the agricultural committee in regard to any proposition. . . ." (June 14, p. 11259).

[20] On the earlier phase, see the revealing votes in the 68th Congress by which the Norbeck-Burtness bill (S. 2250) proposing loans for crop diversification in the wheat-growing states was defeated in the Senate on March 13, 1924, by 32 to 41 (*Congressional Record*, vol. 65, p. 4084), and by which the original McNary-Haugen bill was rejected in the House on June 3, 1924, by a vote of 155 to 223 (*ibid.*, p. 10341).

[21] See *Hearings before the Committee on Agriculture*, House of Representatives, Sixty-Ninth Congress, First Session, Serial C, parts 1-16, pp. 1-1412, on Agricultural Relief.

originally favored only the nearly non-controversial bill for the creation of an advisory division of coöperative marketing in the Department of Agriculture (H. R. 7893, later enacted into law as Public No. 328). On April 10, however, Secretary Jardine indicated that the Administration approved the provision of a large revolving fund from which loans might be made to coöperative associations, and thus endorsed the Tincher bill (H. R. 11618) which contemplated a loan fund of $100,000,000. Mr. Aswell of Louisiana, ranking Democratic member of the House Committee, sponsored the so-called Yoakum plan (H. R. 11606) calling for the incorporation of a voluntary national farm marketing association (the fiduciary officer being designated by the President of the United States), for interstate zone coöperative marketing associations, and for a loan fund of $10,000,000. The recommendations of the Corn Belt Conference were embodied in the revised Haugen bill (H. R. 11603, Report No. 1003), with its provision for a federal farm board that would sell the surpluses of wheat, corn, butter, cattle, swine, and (under somewhat different conditions) cotton, when the domestic "price of any such commodity .... is materially lower than the price thereof in the principal export market of the principal competing foreign country, plus the amount of tariff duty thereon and plus the charges normally incurred in transportation...." (sec. 8, c), with its provision for an equalization fee to be collected from producers, but not for two years, and with its provision for a revolving fund of $375,000,000. No one of these three bills could command a majority in the House committee on agriculture. How all three were reported on April 27 under a special rule has already been told (*supra*, p. 610). On May 21 the House rejected the Haugen bill by 167 to 212 (p. 9789). The vote was sectional, and neither party nor vocational lines held.[22] Of the Republicans who voted, 55.6 per cent were opposed; of the Democrats, 56.7 per cent.

The Senate in the meantime had awaited action on the bill in the House. Despite its defeat there, however, and despite Secretary Mellon's published letter of condemnation of the Haugen bill on June 14, the forces behind the bill (now offered as a Senate committee amendment to H. R. 7893) remained strong enough to force another long bout

[22] Majorities of the state delegations of twenty-two states favored the Haugen bill, as follows: Ala. (6 to 3); Ariz.; Colo.; Idaho; Ill.; Ind.; Iowa; Kans.; Minn.; Mo.; Mont.; Nebr.; Nev.; N. M.; N. C. (7 to 2); N. D.; Okla.; S. D.; Utah; Wash.; Wis.; Wyo. The delegations of twenty-four states were preponderantly in opposition. Those of Ark. and Fla. were tied.

of debate and another vote. On June 24 (p. 11912), however, the Senate rejected it by 39 (23 Republicans, 15 Democrats, 1 Farmer Labor) to 45 (24 Republicans, 21 Democrats). Substitute plans were likewise defeated, notably the Fess bill (S. 4462, virtually embodying the Tincher bill) which, although supported by a direct and lengthy statement from President Coolidge on June 25, was defeated on June 29 (p. 12262) by 26 (23 Republicans, 3 Democrats) to 54 (21 Republicans, 32 Democrats, 1 Farmer Labor). In the end only the innocuous bill (H.R. 7893) for a division on coöperative marketing was enacted into law. The fatal weakness of the movement for the Haugen plan was the refusal of consistent support in the South.[23] Especially when taken in conjunction with the primaries (the reverberations of which sounded through the debate in the later part of the session), the conditions attendant on the double consideration of the farm-relief bill promised more troublesome insurgency; but, from the long-run viewpoint, Republican leadership could find reassurance in the failure of a *rapprochement* between West and South.

The Legislative Record: Laws enacted. Of the grand total of 896[24] public and private laws and resolutions that became law, 327 were private, 46 were public resolutions, and 523 were public laws. It is unnecessary to give figures to show how few of the latter were, by their nature, of general interest; for the session was typical in this respect. Enactments of importance included the following:

(1) The Revenue Act of 1926 (H. R. 1, approved February 26, Public No. 20) was first passed in the House on December 18 (p. 733) by a vote of 390 to 25 (10 Republicans, 10 Democrats, and 5 others) and in the Senate on February 12 (p. 3614) by 58 to 9 (6 Republicans, 2 Democrats, 1 Farmer Labor).

[23] The Haugen plan seemed tied up with the tariff. Not without logic, Democratic spokesmen attacked it on the ground that it involved the bad principle of seeking equality by having "special privilege all around"; but their argument was not oblivious to such considerations as these: "The state of Mississippi last year imported into her borders nearly $3,000,000 of feed and food. Increase that on the average of 50 per cent and the Haugen bill would cost the people of Mississippi more than a million dollars. . . . ." (Mr. Aswell, May 6, p. 8755).

[24] The rôles of the two chambers in the initiation of measures are indicated by the fact that the total, 896, comprised 557 House bills, 290 Senate bills, 24 House joint resolutions, and 25 Senate joint resolutions. In measuring the life-expectancy of bills, it should be remembered that the total, 896, includes 5 omnibus pension bills which covered 2,717 private pension bills, making virtually a total of 3,608 bills which became law out of 17,794 bills introduced in both houses during the session.

(2) Six acts ratified the debt settlements with Italy (H. R. 6773, approved April 28, Public No. 155), Belgium (H. R. 6774, approved April 30, Public No. 159), Esthonia (H. R. 6775, approved April 30, Public No. 160), Latvia (H. R. 6776, approved April 30, Public No. 161), Czechoslovakia (H. R. 6777, approved May 3, Public No. 168), and Rumania (H. R. 6772, approved May 3, Public No. 167). Of these, the Italian settlement elicited the most controversy, but was passed by the House on January 15 (p. 1786) by 257 to 133 and by the Senate on April 21 (p. 7761) by 54 (41 Republicans, 13 Democrats) to 33 (9 Republicans, 23 Democrats, 1 Farmer Labor). At the close of the session the bill regarding the French debt (H. R. 11848, which passed the House on June 2 (p. 10477) by 236 to 111), was being held in the Senate pending action in France. The bill on the Serbian debt (H. R. 11948) passed the House on June 4 and was also waiting in the Senate.

(3) The Public Buildings Act (H. R. 6559, approved May 25, Public No. 281) contemplates the expenditure of about $165,000,000 over a period of years in a program that will be drawn and presented from year to year by the Supervising Architect and the Bureau of the Budget. The General Deficiency Act carried an appropriation for the immediate future. Related thereto is the Foreign Service Buildings Act (H. R. 10200, approved May 7, Public No. 186), authorizing $10,000,000 (with an annual maximum of two millions) for the acquisition of buildings abroad under the supervision of an *ex officio* foreign service buildings commission.

(4) The Railroad Labor Act (H. R. 9463, approved May 20, Public No. 257) was practically drafted by the railroad brotherhoods and the executives in collaboration; it abolishes the Railroad Labor Board and institutes a new Board of Mediation (five members appointed by President and Senate) and a flexible scheme of arbitral boards.[25]

(5) A general and necessarily technical revision of the National Bankruptcy Act was passed (S. 1039, approved May 27, Public No. 301).

(6) Three acts bearing on aircraft development became law. The Air Commerce Act (S. 41, approved May 20, Public No. 254) relates to commercial aircraft and its regulation and encouragement by the Department of Commerce. Another act (H. R. 9690, approved June 24,

[25] Politically, the Railroad Labor Act is significant because it is likely to take still more of the edge off the interest of the railroad brotherhoods in protest-politics, so important in recent years in such movements as the Conference for Progressive Political Action.

Public No. 422) relates to the Navy Air Corps, authorizing $85,000,000 therefor, exclusive of the cost of increased personnel. A third, the Army Air Corps Act (H. R. 10827, approved July 2, Public No. 446) involves a program of about $150,000,000 over a period of five years. Each act creates new post of assistant secretary in charge of air in the department concerned.

(7) A revision (H. R. 7, approved June 3, Public No. 522) of the Civil Retirement Act was enacted providing a maximum annuity of $1,000 and salary deductions of 3¼ percent.

(8) In the field of military pensions and veterans' relief, in addition to the five omnibus pension bills, three measures liberalize pensions in connection with the Civil War (H. R. 4023, approved July 3, Public No. 454), Indian wars (H. R. 306, approved May 21, Public No. 265), and the Spanish American War and Philippine insurrection (H. R. 8132, approved May 1, Public No. 166). In connection with the World War, the Adjusted Compensation Act was amended (H. R. 10277, approved July 3, Public No. 472, and H. R. 12175, approved July 2, Public No. 448), increasing expenditures in this direction about $15,000,000 and bringing the total for World War relief (according to Mr. Tilson) to "nearly $700,000,000 annually, almost as much as the entire cost of government prior to the war."

(9) Continuation of the federal aid policy in road-building was assured for several years by the authorization (H. R. 9504, approved June 22, Public No. 411) of $82,500,000 for each of the fiscal years 1928 and 1929.

(10) A codification of all national laws in force December 7, 1925, was adopted (H. R. 10000, approved June 30, Public No. 440), and provision was made for its publication (H. R. 11318, Public No. 441).

Bills that Failed of Passage. Two relatively important bills—on radio regulation and on banking—were in conference when the session ended, having been held up by serious differences of opinion between the houses. The dispute regarding the radio bill (H. R. 9971) turned chiefly on the House proposal to empower the Secretary of Commerce as against the Senate provision for a new independent commission. On the last day a stop-gap resolution (S. J. Res. 125) was hurried through, to preserve the *status quo* in the radio field until the short session can legislate permanently. The McFadden bill (H. R. 2) for the revision of national banking laws with special reference to branch banking was held in the conference stage principally because of disagreement

over the Hull amendment limiting the branches of national banks to states which themselves permit the practice.

Other measures of general interest did not come so near passage. The omnibus rivers and harbors bill (H. R. 11616), having encountered something like filibustering on the grounds especially of opposition to the "All American" canal and to Chicago diversion, passed the House on June 4 and is pending in the Senate. The constitutional amendment (S. J. Res. 9) to change the commencement of the terms of President, Vice President, and Congress, having passed the Senate on February 15 (p. 3668) by 73 to 2, was reported in the House on February 24, but failed to be acted upon. The coal strike situation provoked the introduction of some sixty bills, but (except for the still-born Copeland resolution urging the President to use his good offices, passed in the Senate on February 9, p. 3283, by 55 to 21) none of the proposals got beyond committee. A joint committee on Muscle Shoals was established (H. Con. Res. 4, passed in the House January 5 and in the Senate on March 13, and a bill approving of particular leases to the Muscle Shoals Fertilizer Company and the Muscle Shoals Power Distributing Company) was reported on April 26, but was not considered. Prohibition was the subject of an increased number of bills, and these furnished an opportunity for hearings, especially before a sub-committee of the Senate committee on judiciary, which were widely noted and became a vehicle for argument and propaganda from both sides. No legislation was passed, however, although two nearly non-controversial bills on the administrative side of the subject were passed by the House and reported in the Senate (H. R. 10729, passed April 27, creating a bureau of prohibition in the Treasury Department, and H. R. 3821, passed March 29, placing prohibition officers under the civil service laws).

Appropriations. The enactment of nine regular and three deficiency appropriation acts was an important part of the routine of the session. The House was expeditious and passed the last of the regular annual acts on April 7, beating the best previous record (in the 67th Congress) by twelve days. Yet the opening discussion of each appropriation bill was, as usual, the vehicle for what Mr. Tilson called "general debate, in the large sense of the term" (p. 761). When, for example, immediate consideration was asked for the Interior Department appropriation bill, it was said that printed copies had been available only for an hour (causing Mr. Cooper, of Wisconsin, to explain that "of all the extraordinary attempts to work in pure machine politics

this is one of the most remarkable illustrations I have yet seen in all my career in the House"—Jan. 5, p. 1145). But the chairman of the sub-committee explained genially the next day, "there were as many as fifty applications for time, and it seemed as if everybody wanted to make a speech, and so the chairman of the committee, out of a desire to accomodate the membership of the House, said we will turn you loose and let you make speeches all day (Laughter). That is the only reason we did it" (p. 1237).

The total of the appropriations was for the fifth time[26] less than the budget estimates. A net reduction of $6,802,000 was "arrived at by a large number of small increases and a still larger number of decreases widely distributed over the entire service"[27]. The total appropriations of the session amounted to $4,409,377,454, or $3,567,054,543 if the postal appropriations (nearly offset by the postal revenues) are excluded. The aggregate appropriations were $470,886,681 (or $273,603,305, excluding postal appropriations) above those made in the last session of the 68th Congress. A comparison is offered in the accompanying table, which shows the budget estimates, the amounts carried in the bills as reported to the House by the committee on appropriations, the sums finally appropriated, and the relation of these to the estimates and to the amounts appropriated by the corresponding acts in the short session of the 68th Congress (p. 622 below).

The Senate as Council and as Court. The resolution of adherence to the World Court was adopted in the Senate on January 27 (p. 2494) by a vote of 76 (40 Republicans, 36 Democrats) to 17 (14 Republicans,

[26] See this REVIEW, vol. 19, p. 769 (November, 1925). Mr. Madden states that the cuts in the estimates that have been made since the establishment of the system in 1921 aggregate $351,526,429, of which, however, $312,361,792 was in connection with the first set of estimates.

[27] *Congressional Record*, vol. 67, July 12, 1926, p. 13007, in the "review of appropriations, etc.," by the chairman of the House committee on appropriations, Mr. Madden. The figures presented above in the text and in the subjoined table are taken from that source, from a review by the chairman of the Senate committee in the same issue, and in the case of one column from information supplied directly by the clerk of the House committee.

It should be remembered that discrepancies between the amounts called for in the budget estimates and in the bills as reported by the House committee on appropriations are especially likely in the case of the deficiency bills, for "as soon as the House committee reaches a point where it must conclude its consideration in order to get the bill into the House, word is sent to the Bureau of the Budget to divert estimates to the Senate from that date on" (letter from the committee clerk to the writer).

2 Democrats, 1 Farmer Labor). The use of cloture has been discussed above, and the nature of the reservations and their detailed consideration are beyond the scope of this survey. The pending treaty of greatest interest—the Lausanne treaty with Turkey—was deferred by an agreement reached on July 2 (p. 12616), being made a special order for January, 1927. Executive sessions for the consideration of appointments were frequent. Some relatively unimportant nominations were rejected or withdrawn, but T. F. Woodlock was confirmed as a member of the Interstate Commerce Commission. A possible precedent of significance was set in giving unanimous consent to Senator Blease to disclose how he and his colleague (embarrassed politically in the matter) had voted on the confirmation of Commissioner Woodlock (June 26, p. 12098). Sitting as a court of impeachment to hear charges against George W. English, judge of the U. S. district court for the Eastern District of Illinois, who was impeached by the House of Representatives on April 1 by a vote of 306 to 62 (21 Republicans, 41 Democrats), the Senate decided on May 5 (p. 8667) to adjourn as a court of impeachment until November 10, 1926.

The President and Legislation. Two bills only—one a private bill and the other virtually private in character—were vetoed during the session.[28] Five others, but all of minor importance, were killed by pocket vetoes. "Coolidge stresses Congress' freedom—just before leaving for vacation he says it was free from dictation by him," read a headline a few days after the adjournment.[29] In the face of so disarming a gesture from the White House Spokesman, it would be unfair (as in any case it would be premature while important pending bills await final action in the short session) to ask how fully the presidential recommendations were realized in legislation.[30]

[28] H. R. 9984, authorizing the reappointment of a certain army officer, was vetoed on May 14 because discipline required that the decisions of the efficiency board be treated as final. The other "messaged" veto, on July 2, concerned S. 4152, which sought to validate twenty oil and gas mining leases (the validity of which was questioned in pending litigation) upon unallotted lands within Indian reservations created by executive order.

[29] *New York Times*, July 7, 1926, over a news-story which added: " . . . . it was mentioned, perhaps stressed, at the White House . . . . that one of the reasons for the success of the session was that the Senate and House assumed their own responsibility and undertook to function as an independent branch of the government without too much subservience to the Executive."

[30] See, however, the check on this point maintained currently in the *Congressional Digest* (a private publication, Washington, D. C.)

RECAPITULATION OF APPROPRIATION ACTS, FIRST SESSION OF SIXTY-NINTH CONGRESS.

Title of act	Budget estimates Sixty-ninth Congress, first session	Totals of bills as reported to House of Rep. by Committee on Appropriations	Appropriations Sixty-ninth Congress, first session	Increase (+) or decrease (−) appropriations compared with Budget estimates	Increase (+) or decrease (−) first session, Sixty-ninth Congress, compared with second session of the Sixty-eighth Congress
REGULAR ACTS, FISCAL YEAR 1927					
Agriculture, Department of	$130,016,508.	$126,770,805.	$127,924,573.	−$2,091,935.	+$3,150,132.
District of Columbia	34,053,022.	33,757,181.	33,918,571.	−134,451.	+2,090,774.
Independent offices	512,870,315.	502,488,768.	512,928,376.	+58,061.	+60,494,042.
Interior Department	227,288,452.	226,473,638.	226,332,918.	−955,534.	−13,370,008.
Legislative Establishment	16,512,381.	16,406,727.	16,437,327.	−75,054.	+1,526,355.
Navy Department	320,955,030.	317,274,787.	319,650,075.	−1,304,955.	+32,247,747.
State, Justice, Commerce, and Labor Departments	79,936,971.	79,847,491.	79,963,851.	+26,880.	+8,226,558.
Treasury and Post Office Depts.	872,482,861.	867,852,461.	868,281,501.	−4,201,360.	+105,060,139.
War Department	338,494,225.	339,585,924.	342,609,611.	+4,115,386.	+10,326,940.
Total, regular annual acts	2,532,609,767.	2,510,457,782.	2,528,046,805.	−4,562,962.	+209,752,680.
DEFICIENCY ACTS					
First deficiency, 1926	425,573,865.	381,236,254.	426,298,681.	+724,815.	————
Second deficiency, 1926	54,434,660.	43,372,065.	50,822,696.	−3,611,964.	————
Pension deficiency, 1926	10,730,000.	10,730,000.	10,730,000.	————	————
Total deficiency acts	490,738,526.	435,338,319.	487,851,377.	−2,887,148.	+270,281,220.
Total, regular annual and deficiency acts	3,023,348,293.	2,949,796,101.	3,015,898,182.	−7,450,111.	+480,033,900.
Miscellaneous relief and claims acts (estimated)	————	————	648,111.	+648,111.	−1,921,072.
Total, regular annual, deficiency, and miscellaneous	3,023,348,293.	————	3,016,546,293.	−6,802,000.	+478,112,829.
Permanent and indefinite appropriations	1,392,831,160.	————	1,392,831,160.	————	−7,226,148.
Grand total	4,416,179,454.	————	4,409,377,454.	−6,802,000.	+470,886,681.
Grand total, exclusive of Postal Service payable from postal revenues	**3,567,054,543.**			————	**+273,603,305.**

FOREIGN GOVERNMENTS AND POLITICS

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The National Economic Council of France. Since the war had necessitated resort to technical experts in the economic services of the French government, it was natural that after the armistice there should have been talk in various quarters of some sort of functional representation to meet post-war problems. Some suggested the development of the regional economic councils brought into being in 1917, while the Action Française was for setting up what was dubbed a new estates general. It was, however, the General Confederation of Labor (the C. G. T.) under the leadership of M. Jouhaux, which not only came forward with a carefully thought out plan[1] but was sufficiently interested to pursue the matter until seven years later the general features of its program were finally incorporated into the public law of France.

Maintaining that no purely political body like the French Parliament was equal to the solution of the complex social and economic problems that France faced, the Confederation sent a delegation to Clemenceau on December 31, 1918, and again on January 12 of the following year, to urge the formation of a National Economic Council, to be composed of representatives chosen by the chief organizations of employers and of workmen, to whom were to be added technical advisers and economists—persons, in short, employed in the actual conduct of affairs—whose object would be to reconcile conflicting interests, coördinate the action of the different ministries, and produce a scientific program for a thorough reorganization of the economic life of the country as a whole.[2] While the premier lent a polite ear to these suggestions, he did no more than offer a weak substitute which labor would have none of. Moreover, the Chamber of Deputies, elected in 1919, was not at all of the sort to meet suggestions from labor with any cordiality.

[1] Maxime Leroy suggests that this was a dream of Saint Simon revived by the C.G.T. (*Le Progrès civique*, January 31, 1925). Be it remembered that after the war, before the split in its ranks in 1921, the Confederation numbered over two million members.

[2] *Le Peuple*, May 20, 1924; *La Voix du Peuple*, March-April, 1925.

Thrown back on its own devices, the Confederation, in collaboration with the *Union Syndicale des Technicians de l'Industrie, du Commerce, et de l'Agriculture* (U.S.T.I.C.A.), the Coöperatives, and the Federation of Civil Servants, set up January 8, 1920, a so-called Economic Labor Council to devise measures to meet the crisis and to serve as a sort of training school for the eventual undertaking to which it hoped to convert the government. Although one of its proposals, that for the nationalization of railroads, went so far as to be presented on the floor of the Chamber of Deputies in the form of a bill, the Council gradually ceased to operate after about a year, possibly because of the schism in the Confederation in 1921.[3]

Meantime M. Jouhaux stuck to the idea of a national economic council, and at the congress of the Confederation in 1923 he secured the adoption of a more fully developed program than the one presented immediately after the armistice.[4] And, although the plan met with criticism on the one hand from extremists in the ranks of labor on the ground that it would bolster up capitalism, and on the other from sticklers for the traditions of administrative law, it gradually gained friends among various classes until, to the surprise of the Confederation, on the eve of the general election of May 11, 1924, the Paris Chamber of Commerce even secured a pledge from Poincaré to support the idea.[5] After the election returns made it certain that France was to have a Parliament of a much more liberal sort than that which had so recently been willing to feed out of Poincaré's hand, M. Jouhaux came out in *Le Peuple*[6] with a strong plea for the Council and followed it up until Herriot's minister of labor, M. Godart, a fearless man—one of the few, in fact, who had dared beard the Tiger during the war—appointed on July 19 a committee of inquiry to report a draft constitution for a national economic council.

Under the chairmanship of M. Godart himself were gathered distinguished economists, such as Professor Gide, and jurists as well as representatives of the leading organizations of capital and labor, including, of course, M. Jouhaux.[7] The committee, having held several

[3] *Ibid.*

[4] Published in full in *L'Information sociale*, August 14, 1924.

[5] *Le Peuple*, May 20, 1924. Labor, of course, felt certain that any council Poincaré might set up would give insufficient attention to its wants.

[6] May 20, 1924.

[7] For a complete list of the members of the committee see *La Voix du Peuple*, March-April, 1925, pp. 50–51, or *Industrial and Labor Information*, Vol. XI, No. 7, p. 16.

meetings during the succeeding months, finally completed the draft constitution on October 10.[8] After some alterations which the cabinet thought necessary in order to bring the plan into harmony with the French constitution and administrative practice, a decree, dated January 16, 1925, finally provided for the constitution of the Council.[9] On April 9, a few days before the fall of his cabinet, M. Herriot issued a further *arrête* naming the specific organizations which were to choose representatives.[10] Apparently the retirement of M. Herriot did not affect the fate of the institution he had just set up, for M. Durafour, who became minister of labor on April 17, was ranking member of M. Godart's draft committee, being at the time the chairman of the Deputies' committee on labor.[11]

The organizations designated by M. Herriot proceeded to appoint their representatives, and the Council met on June 22 to effect its organization. M. Jouhaux was elected one vice-president and M. Pinot the other.[12] It is interesting to note that while M. Jouhaux is thus head of the chief organization of French manual labor, M. Pinot, the delegate of the Union of Metal and Mining Industries, is vice-chairman of the *Comité des Forges*, probably the most powerful organization of capital in France. The Council proceeded next to elect its permanent committee of ten, which includes six men who were formerly on the draft committee.[13] Of the forty-seven members of the Council, nine are delegates of the Confederation, all but one of whom represent wage earners.[14] The body which broke away from the Confederation in 1921, known as the General Confederation of United Workers (the C.G.T.U.), although having a membership considerably over half that of the Confederation,

[8] Published in full in *La Tribune de Fonctionnaire*, and in summary in *Industrial and Labor Information*, Vol. XII, No. 5, p. 24–25.

[9] *Journal officiel*, January 17, 1925.

[10] This task of choosing organizations to be represented was a difficult one, as French economic interests are, in general, not well organized. In an attempt to remedy this in part, a decree, July 26, 1925, provided for trade councils for artisans, *Monthly Labor Review*, January, 1926.

[11] Professor Scelle, *chef au cabinet* of the ministry of labor, under Godart, said in the presence of the writer that, at least as far as internal affairs were concerned, M. Herriot considered the establishment of the Council the main undertaking of his administration.

[12] *Industrial and Labor Information*, Vol. XV, No. 2, pp. 13–14. The premier is *ex officio* president of the Council.

[13] *Industrial and Labor Information*, Vol. XV, No. 2, p. 14.

[14] *Journal officiel*, April 11, 1925. The other one represents the General Federation of Christian Workers.

has no representation in the Council. This is due, no doubt, to the fact that the C.G.T.U. is affiliated with the Third International, and that M. Monmousseau, its head, is indifferent if not hostile to the Council. Is it possible that the government was trying to give the Confederation a representation on the Council which would compensate it for having failed in a measure to secure the sort of body that labor demanded—one with teeth and claws? For while the draft presented by Godart's committee contained practically what the Confederation outlined in 1923, sometimes in its very words, the constitution as finally adopted pared this down considerably.

How much of the Confederation's program was saved? In the first place, the composition of the Council has the general features labor had suggested.[15] The body is made up of forty-seven members, distributed as follows: (1) nine representing consumers, selected from consumers' unions, from mayors' associations and unions of towns, from parents and mutual benefit societies; (2) thirty representing labor, i.e., (a) intellectual labor and education, (b) managers or directors of industry, agriculture, commerce, transportation, the coöperative movement, and public utilities, (c) salaried employees and wage earners, i.e., civil servants, technicians,[16] and wage earners, and (d) artisans; and (3) eight representing capital, i.e., (a) industrial and commercial capital, (b) real estate, and (c) banks, stock exchanges, insurance, and savings banks.[17] In addition to these, there are to be other members sitting with the forty-seven in a purely consultative capacity, i.e., one substitute for each of the above[18]; also such experts as the Council thinks necessary to associate permanently with its work, the French representative on the governing body of the International Labor Office, etc. The ministries of labor, commerce, agriculture, finance, public works, and colonies will also each appoint two experts (Article 11). Although the government is authorized to decide in the first place what particular organizations are to be represented, the Council has the right to decide when the choice is disputed (Article 4). "When a question concerns a particular economic

[15] The Confederation had from the first suggested the two categories, consumers and producers, the latter to include employers and employees in industry, agriculture, commerce, and transportation.

[16] In the draft, technicians were not included as a separate category. The executive of the U.S.T.I.C.A. had a meeting on November 2, 1924, and again on November 8. A change was made which appears in the decree.

[17] Article 3, Decree of January 16, 1925. *Journal officiel*, Jan. 17, 1925.

[18] Each of the forty-seven may have two substitutes, but only one may sit on the Council at a time. Arrête, April 9, 1925. *Journal officiel*, April 11, 1925.

or occupational category which is not represented permanently on the Council, the Council may, for the consideration of such question, admit representatives of the category in question" (Article 12).

As to organization, the Council is attached to the office of the premier instead of any particular ministry, and the premier is *ex-officio* president of the Council; while the Council elects its own vice-presidents and bureau and makes its own rules of procedure (Articles 2 and 8). The Council also elects a permanent committee of ten from its own membership to take care of current matters between sessions, to see to the execution of its decisions, and to prepare agenda for its meetings (Article 9).[19] The Council can ask to be heard by the competent committees of the chambers of Parliament, as well as by the ministers and members of the government, and may ask them to be represented at its sessions if they are not already so represented. Ministers, under-secretaries, and high commissioners of either chamber may demand the right to be represented before the Council or its permanent committee (Article 13). The Council may set up permanent organs to make investigations and publish the results (Article 14), while its reports to the government will be published in the *Journal officiel* (Article 16).

As to functions, in addition to investigations that the Council may make on its own motion, the government will submit to it "for its information," after their presentation to one or the other of the Chambers,[20] all government as well as private bills of an economic nature, and in connection with any law of economic interest it may require consultation of the Council concerning the administrative measures necessary to its application (Article 18). The Council is not limited to matters laid before it by the government; by a two-thirds vote it may take up any economic question whatever (Article 15), and if its recommendations to the government are carried by a two-thirds vote, the premier is obliged either to report to the Council within a month what action has been taken on the matter or to refer it back for reconsideration (Article 17).

The Confederation had asked for these provisions, if not in so many words, at least in substance. Now as to what it secured from the draft committee, but which the cabinet dropped. According to the draft, the Council was to have had financial autonomy, in that its expenses

[19] The above mentioned *arrête* provides that the premier may call special sessions of the Council, for which he alone shall determine the agenda.

[20] This provision *"après leur dépôt,"* was not suggested by the Confederation, as it wished the Council consulted as of right on the drafting of all such bills.

were to be met from the budget of the premier rather than from that of any particular ministry, whereas the decree provided that its expenses were to be met out of the budget of the ministry of labor (Article 2). Moreover, in the draft there was a provision that the Council, by a two-thirds vote, should have the right to transform any one of its decisions into a so-called "recommendation," whereupon the premier could incorporate the matter into a government bill, take the administrative measures necessary, or transmit it to the chambers. Within the same time limit, he could refer such "recommendations" back to the Council for a second consideration, after which, if they were carried again by a two-thirds vote, he was to be obliged to take one of the three courses of action enumerated.[21] In other words, M. Jouhaux succeeded in getting into the draft remarkable provisions that would have made the Council not only independent financially, but able by a two-thirds vote to initiate bills over the head of the cabinet. These powers M. Herriot's government was unwilling to concede.

Now as to what the Confederation wanted that M. Jouhaux was unable to get even into the draft, to say nothing of the decree. As far as legislation was concerned, the Confederation wanted the government to be obliged to consult the Council on all government bills of an economic nature before they were ever presented to Parliament[22]; while a private member's bill was to be submitted to the Council for its opinion after it had passed one chamber and before it went to the other. As far as administration was concerned, the Confederation wanted the Council to have the right to be consulted on the organization and budgets of departments concerned with economic and social matters and, in addition, the power to control their activities within the provisions of administrative regulations of the government.[23] The effect of labor's full program would have been to take control of economic and social affairs from the cabinet, and to give them over to a functional body checked only by its own constituents and by the constitutional rights

[21] Article 14 in draft constitution, *La Tribune de Fonctionnaire*. Note that there is a precedent for this in Part XIII of the treaty of Versailles with reference to the procedure of the Labor Office.

[22] Such power as the constitution of the German Reich, Article 165, provides shall inhere in the Federal Economic Council.

[23] The Confederation's program of 1923 is published in full in *L'Information Sociale*, August 14, 1924. Maxime Leroy, in *Le Progrès civique*, October 18, 1924, went further, suggesting that the Council should have a veto on the economic legislation of Parliament.

of Parliament. This is precisely what labor wanted. In this, it thought, lay the salvation of France.

Although the Confederation did not succeed in securing some of the vital features of its program, it accepted, as a first installment, what the government conceded, namely, a council with merely advisory functions, independent of the government, however, in so far as it may fix its own agenda, present the results of its deliberations to the public through the *Journal officiel*, and decide in the last resort what organizations are to be invited to be represented in it. Above all, it will be independent, because its voting members are the representatives of influential economic and social groups with considerable sections of public opinion behind them. While the Council may speak with authority, it will have, as Professor Scelle says, "only such moral authority as its composition, its expert qualifications, and its disinterestedness give it."[24] This body should be able to furnish the government expert advice on matters which are necessarily beyond the ken of professional politicians, and should be a permanent organization of social conciliation. As M. Herriot said, in presenting the decree to the president of France, "this Council will enable the government to avoid the danger of detached and uncoördinated or fragmentary decisions."[25]

The French government, well organized from the point of view of administration and politics, had been wanting from the point of view of economics. Each administrative department has occupied itself with its own particular task, endeavoring to satisfy a particular class or group such as agriculture; but there was lacking among the different ministries a force to coördinate their efforts in the interest of the whole. As for Parliament, there were members able to speak for agricultural commercial, and industrial interests—which, however, they were not elected specifically to represent. In consequence, when questions concerning any one of these interests came up, its defenders were scattered among various political factions. Besides, the representatives that any one interest could command in Parliament did not correspond to its proportionate strength among the social forces of the nation. From time to time it might happen that some particular economic interest would have sufficient strength in Parliament to tip the scales in its own favor regardless of the needs of other interests. Both Parliament and the public services were constantly being subjected to pressure from this side and from that which disturbed the equilibrium. There was, in fact,

[24] *Revue politique et parlementaire*, Oct., 1924.
[25] *Journal officiel*, January 17, 1925.

no provision to secure a synthesis of the multiple interests of the nation. It was to supply this need that the Council was set up.[26]

The friends of the Council have great hopes for it. Not the least of these is that the setting up of national economic councils in the various states of Europe may lead eventually to an International Economic Council,[27] a basis for which was laid, in a way, in some practices of coöperation among the Allies during the war. With this in mind, the French provided that their representative on the governing body of the International Labor Office should always be an *ex-officio* member of their National Economic Council, and that that body might include international questions of an economic character in its agenda. For years M. Jouhaux has felt that the foundation of peace could be assured only by close economic coöperation on the part of the states of Europe. At Geneva on September 12, 1924, as a member of the Temporary Mixed Commission of the Assembly of the League of Nations, he specially urged this point.[28] He has in mind, as part of the organization of the League, a council on a functional basis somewhat like that of the International Labor Office. At the particular urgency of the French, a preliminary commission of the League is meeting even now (May, 1926) to discuss arrangements for a world economic conference. Such is the situation, such the hope, of considerable groups in Europe.

EDITH C. BRAMHALL.

Colorado College

A Parliamentary By-election in Paris. The final results of a hotly contested by-election in Paris were given out on Sunday evening, March 28. Two communist deputies were elected to the Chamber to replace two conservatives by the narrow margin of 1,500 votes in a

[26] See article by Professor Georges Scelle in *Revue des Études Coöperatives*, Jan.-Mar., 1925.

[27] This was clearly expressed in the Confederation's program in 1923. See also Maxime Leroy in *Le Progrès civique*, October 8, 1924. Spain, Portugal, and Italy have national economic councils set up by decree or statute, while the constitution of Poland (Art. 68) provides for a national economic council, as does that of Dantzig (Arts. 45 and 114), that of Jugoslavia (Art. 44), and that of the German Reich (Art. 165). The German article provides for the establishment of a council with the right to initiate bills in the Reichstag even over the head of the cabinet, as well as the right to send representatives to defend its proposals on the floor of the Reichstag. Pending the formulation of a constitution for such a council, a Provisional Economic Council was set up on May 4, 1920, whose powers and functions are practically like those of the French Council.

[28] *La Voix du Peuple*, March-April, 1925.

constituency which contained nearly 200,000 registered electors. This election is important not only because of the wide comment which it caused but also because it illustrates many of the working forces in present-day French politics.

The procedure followed in French by-elections is practically the same as that used for the election of all the deputies prior to 1919. If no candidate receives an absolute majority at the first balloting, there is a second balloting at which the candidate with the highest plurality is declared elected.[29] At the first balloting in the Paris election, held on March 14, many rival lists were presented. The most important were the following: the list of the conservatives (*union républicaine sociale et nationale*),[30] the list of the communists,[31] the list of the socialists,[32] and the list of the *petit cartel* (one radical-socialist and one independent socialist). Contrary to the situation at the general elections in 1924, no *cartel des gauches* was formed, the socialists refusing to coöperate with the radicals.

The constituency in which the by-election was held comprised the heart of the Paris business district, together with an outlying portion of the city populated largely by working-class people. The contrasts presented in the district were reflected in the results of the first balloting, The candidates of the extreme right and those of the extreme left ran far ahead of the others, but no list obtained an absolute majority. As compared with the 1924 election results, there was a tremendous falling off in the popular strength of the parties composed largely of *petit bourgoisie*.[33] Although the proportion of abstentions was considerable, it was no larger than at a similar by-election in the same sector in 1921.[34]

Immediately following the first balloting the various groups whose candidates had made a poor showing met and decided upon their action at the second balloting. The socialists withdrew their candidates in favor of the communists. The regular organization of the radical-

[29] An excellent summary of French election procedure may be found in Joseph-Barthelemy and Duez, *Traité élémentaire de droit constitutionnel* (Paris, 1926).

[30] Formerly called the *bloc national*. See *Europa*, 1926 (London, 1926) and Canère and Bourgin, *Manuel des partis politiques en France* (Paris, 1924).

[31] *Section française de l'internationale communiste* (S. F. I. C.).

[32] *Section française de l'internationale ouvrière* (S. F. I. O.).

[33] The Radical-Socialist party (Herriot, Caillaux, Clemenceau) and the Republican Socialist party (Briand and Painleve).

[34] Few of the Paris journals seemed to recognize this and interpreted the large proportion of abstentions as a new indication of popular discontent with Parliament. See *Le Temps*, March 26, 1926, "*L'Abstention Nefaste.*"

socialists made the same decision, but some of the more conservatively minded radical-socialists refused to follow this lead and put up a list of their own.[35]

The course of the campaign could be followed very well by consulting the principal organs of combat, *L'Echo de Paris* (conservative) and *L'Humanité* (communist). The election was not fought directly over the policies of the government of the day, but the issue was drawn between fascism and bolshevism, between clericalism and anti-clericalism, between militarism and pacificism, between the white flag and the red flag, between the "Mussolinis"[36] and the "Lenins" of France.[37] The polemics on both sides were violent, and a person attending the huge communist meeting at which the conservative candidates spoke could see that the propaganda was stirring the passions of the people.[38]

The election of the two communist candidates was looked upon by the conservative journals as a calamity, as it indicated a partial surrender of the *cartel des gauches* to the extremists.[39] On the other hand, the cartellists refused to be alarmed at the slight addition made to the small communist contingent in the Chamber and regarded the election as a setback to French fascism.[40] An examination of the election figures in the light of previous election returns shows that there were only slight changes in the party alignments.

The moral effect of the election upon the conservatives and the communists has nevertheless been considerable. Allowing for the fact that the Parisians have always been more extreme in their political tendencies than the provincials,[41] it may be said that if a general election

[35] M. Franlin-Bouillon, a radical socialist deputy, deplored the bad effect that a communist victory would have upon the French military operations in the Riff.

[36] *L'Humanité* launched violent attacks upon Senator Billiet, the president of *L'Union des Interêts Économiques*, and upon Taittinger, *"bonapartiste fasciste"* for the support which they gave the conservative candidates. See issues of March 21, 22, 25, 26, and 28, 1926.

[37] *L'Écho de Paris*, March 17, 1926, accused the Soviet diplomats, Elanski and Tikhmeneff, of aiding the communists.

[38] The demonstrations after the election were large and turbulent. A member of a conservative organization, *Jeunesse Patriotes*, was killed by a policeman.

[39] *Le Temps*, March 30, 1926; *Le Journal des Débats*, *L'Écho de Paris*, for the same date.

[40] *Le Quotieden*, *L'Oeuvre*, and *L'Ère Nouvelle*, for March 29.

[41] G. Gautherot, *Le monde communiste* (Paris, 1925), describes the geographical distribution of the communists in France. For a description of a conservative stronghold see A. Seigfried, *Tableau politique de la France de l'ouest* (Paris, 1913).

RESULTS OF THE LEGISLATIVE ELECTIONS HELD IN THE SECOND SECTOR OF PARIS SINCE 1920 ARE AS FOLLOWS:

Election	Total number of votes cast	Average number of votes cast for				
		Communist list	Conservative list	Socialist list	Radical, or *cartel des gauches* list	Other lists[42]
1921 by-election, first balloting	118,600	32,900	47,000	12,900	20,500	5,300
Second balloting	132,100	58,200	69,800			3,100
1924 general elections[43]	171,900	40,800	56,400		49,700	25,000
1926 by-election,[44] first balloting	118,600	37,600	47,100	15,500	11,700	6,700
Second balloting	134,700	63,200	61,600		7,100	3,800

were to be held in France in the near future, the parties at the two extremes would probably gain at the expense of those in the middle.[45] A dissolution of the Chamber, after the passage of a law reëstablishing the *scrutin d'arrondissement*, is among the political topics of the day.

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[42] Includes also the blank and spoiled ballots.

[43] G. Lachapelle, *Les élections législatives du mai, 1924* (Paris, 1924), 198–201.

[44] *Le Temps*, Mar. 30, 1926.

[45] In a by-election held in the city of Belfort on February 4, 1926, M. Tardieu, running as a conservative candidate, captured a seat that had long been held by the radical-socialists. On the other hand, in the department of the Marne, the *cartel des gauches* was successful on February 28, 1926, in electing its candidates.

NOTES ON INTERNATIONAL AFFAIRS

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Special Assembly of the League of Nations.[1] The Special Assembly of the League of Nations which convened at Geneva in March for the purpose of admitting Germany to the League failed to transact its business and rewarded the German delegation for ten days of embarrassing but instructive waiting with only a unanimous *voeu*. This was proposed by M. Briand at the close of an eloquent and skillful address before the final session of the Assembly; it expressed the regret of that body at the difficulties encountered, and the hope that before the regular September session these obstacles would be surmounted, so as to make it possible for Germany to enter the League on that occasion.

The March proceedings at Geneva have already been extensively described, but the occasion was one of capital importance in the evolution of the League and constitutes the background for a series of problems which remain to be adjusted. The League received from certain quarters unexpected and radical proposals to alter its constitutional structure, and these were promoted in a manner indifferent to, indeed essentially hostile to, its own method of procedure. These efforts failed, thanks primarily to the policy of the Swedish government, conducted throughout with courage and determination by Mr. Unden. It was demonstrated, for the time at least, that the Covenant was not to be modified merely to meet the special policies and ambitions of certain states.

Apart from these results, however, the issues raised at Geneva remain in suspense. Upon their satisfactory settlement depends in considerable measure the immediate capacity of the League to deal with major questions. It is essential that Germany be admitted if the organization is to go forward as an effective agency for the reconciliation of Europe—to say nothing of its wider purpose—and it may be hoped that from this experience a lesson of respect and deference has been learned regarding the conduct of matters which concern the League as a whole.

[1] This note and the following one were written by Professor Williams in Europe and on the basis of first-hand observation. [*Man. Ed.*]

As is commonly known, the difficulties referred to above grew out of attempts to alter the composition of the Council in addition to granting a permanent seat to Germany. The whole question of Germany's admission to the League was muddled some weeks, or perhaps months, in advance of the March Assembly by efforts to create additional seats on the Council by diplomatic bargaining and private understandings. It finally remained for Brazil to contribute the last of a series of discreditable maneuvers which collectively served to thwart the wishes and expectations of the vast majority of the members of the League. That the "spirit of Locarno" was in part purchased last October by promises to elevate Poland to a place on the Council simultaneously with the entrance of Germany is merely a conjecture, and one which all believers in elementary fair dealing would wish resolutely to put aside. But, apart from the matter of good faith toward Germany, it was disquieting to observe a limited group of states attempting to adjust to their own advantage a matter of such importance as the structure of the Council and one which so manifestly comes within the framework and procedure of the League itself.

In a report on the March Assembly to the Swedish Parliament on March 26 last, Mr. Unden made the following declaration: "When I still, in spite of all, dare hope that the crisis just experienced may lead to success, it is because this hope is inspired by the fact that the smaller states did succeed in defeating the attacks on the constitution of the League. It has been proved to the whole world that secret promises and private agreements of the Great Powers on the vital concerns of the League cannot be accepted as law for the League itself."[2]

What was the nature of this attack on the constitution of the League to which Mr. Unden referred? The question should first be examined in the light of the principle originally established at Paris respecting the composition of the Council which, the representative of Sweden contended, should be altered only through the orderly procedure of the League as a whole.

When the Covenant was drawn up at Paris, the principle adopted in respect to the structure of the Council and expressed in Article 4 was that of permanent membership for the Great Powers and representation of the other members of the League in a permanent minority of one.[3] A departure was made from this principle, however, in 1922 when the

[2] *Social-Demokraten*, Stockholm, March 26, 1926.

[3] Philip Baker, "The Making of the Covenant from the British Point of View," in *Les Origines et L'Oeuvre de la Société des Nations*, II, 37.

Third Assembly, upon the recommendation of the Council, increased the non-permanent seats from four to six. But it does not appear that the alteration made at that time was regarded as permanently modifying the principle laid down in Article 4. Indeed it was specifically pointed out in the Council's proposal on the matter that "a subsequent augmentation of the number of permanent members would reëstablish the principle of which Article 4 is the application without it being possible to consider that the change proposed today prejudiced such reëstablishment."[4] Such an augmentation of the permanent members had been generally foreseen with the admission of Germany to the League and, if ever, the United States and Russia. The entrance of Germany in 1919 had been advocated, it may be recalled, at Paris by the British and American delegations, but was not pressed on account of the opposition of the French.[5] Her subsequent entrance with a permanent seat on the Council was a logical application of the accepted principle of the League on the make-up of the Council, and not the occasion to demand its reconstruction.

It must, of course, be said that the above principle respecting the structure of the Council need not have been regarded as irrevocably fixed; but any departure therefrom was preëminently an affair of the League as a whole. It was the type of question for which League precedent and procedure would have dictated open investigation and report, and adequate notice to all members of the League well in advance of any proposed action. The methods actually employed in the matter prior to the March Assembly and the irregular and secret manner in which negotiation proceeded there are properly characterized by Mr. Unden as subversive of the constitutional procedure of the League. No opportunity was given the Assembly to express its opinion on the claims of the various Powers for seats on the Council, or to exert its influence toward the withdrawal of these claims. The Assembly desired the admission of Germany to the League and to the Council; the part it actually played in the proceedings was merely to be summoned on the last day and to be told by the Council that the matter had been postponed. The negotiations precedent to this decision were carried on entirely outside League procedure and machinery.

Claims for seats on the Council along with Germany were publicly revealed during the later part of February, with Poland, Spain, Brazil, and China in the rôle of aspirants. Whatever may have been the

[4] Minutes, First Committee, Third Assembly.
[5] House, *What Really Happened at Paris*, 418.

origin of the Polish claim, it was supported throughout with excessive zeal by France, and Sir Austen Chamberlain appeared to regard its recognition as the chief aim of a worthy conciliator. On March 2, M. Briand stated in the French Chamber the position of his government on the question: "It was in favor of the extension of the Council and the business would now have to be dealt with. If the Council were enlarged he would see Poland on it with very keen pleasure (cheers), and he hoped that Germany would understand that that was her own interest, since the Council was not a closed field of combat but an organ of conciliation, taking its decisions unanimously."[6]

When the French delegation arrived at Geneva some days later it was understood to be ready to support the desire for permanent seats put forward by Poland, Spain, and Brazil. In short, M. Briand appeared to approach the question of the reconstruction of the Council in very much the same spirit as he might show in manipulating the various blocs in the French Chamber in order to secure a majority—any sort of an arrangement would do so long as Poland was in the combination. And throughout the whole Geneva proceedings the French support of Poland was tirelessly maintained, although one resourceful scheme after another proved unable to prevail against the principle upheld by Mr. Unden. Sweden won her case against the enlargement of the Council; but even in the last compromise, which was wrecked by Brazil, a place was found for Poland. It was presumed that the Assembly would have chosen her to one of the seats vacated by the magnanimity of Czechoslovakia and of Sweden. Did France inspire this Polish claim or did she merely feel compelled to champion the cause of a troublesome and exacting ally? In either case the result was the same. It was one of the major causes of the Geneva failure; for, once the claim of Poland was countenanced, the field was open.

An impressive bulk of opinion in Great Britain assigns to Austen Chamberlain a like responsibility for the failure of the March Assembly to admit Germany to the League. He is charged with an easy acquiescence in the various schemes early set on foot for enlarging the Council and with persevering in a policy at variance with the mandate of his country. It must, in fact, be said that if it were permitted to anyone to remove in advance the difficulties which blocked the entrance of Germany, Sir Austen enjoyed that privilege, and not only did he fail to exercise his authority in this direction, but he used it instead

[6] *London Times*, March 3, 1926.

in the fashion best calculated to defeat the object which, without doubt, he genuinely desired.

Public opinion in Great Britain pointed out his way with marked precision well in advance of the Geneva meeting. In an editorial on February 27, the London Times summed up the matter thus: "Representatives of every party and of associations that include members of various parties, as well as individuals like Lord Grey, who possess a national authority independent of their party standing, have expressed similar views with singular unanimity. They are utterly hostile to the idea of making the admission of Germany to the League and the Council next month an occasion for enlarging the Council by the sudden admission of three other new permanent members..... It is not going too far to say that the country.... was definitely shocked by this unexpected proposal to reduce to the terms of ordinary diplomatic bargaining an occasion that ought to have been the undarkened symbol of European reconciliation."

Such was the reaction—and warning—which the British Foreign Secretary received at home toward the proposals to enlarge the council,—proposals which, only a short while before, he had referred to with unfortunate toleration in his speech at Birmingham. He had at least two weapons with which he might have resisted the various schemes that were springing up about him. One was the wellnigh united hostility of his countrymen toward him. The other was the principle which the Swedish government has announced, namely, that the revision of the Council was a matter for the whole League to consider through its own careful and orderly procedure, and was not the business for which the Special Assembly was convened. The first of these, the strength of opinion in Great Britain, he deliberately discarded; the second, the League principle, he utterly failed to perceive. Had Sir Austen been disposed to accept the judgment of his own country, which was regardful of the true interests of the League, he should have moved promptly and vigorously in the early stages of the threatening crisis. This he refused to do, insisting rather upon a "free hand" at the March Assembly, which he used there to the evident dismay and dissatisfaction of large elements of the British public.

Sir Austen went to Geneva with definite instructions from the British cabinet. Subject to the discretion of the Foreign Secretary to make the best arrangements he could secure in accordance with the development of the situation, British policy was to be based on the following principles: (1) No change in the Council can be admitted which would

have the effect of preventing or delaying the entry of Germany. It would be best that Germany should, as a member of the Council, have full responsibility for any further change in the Council beyond her own admission. (2) The rule that only Great Powers should be permanent members of the Council should, in principle, be maintained. Spain is in a special position and may require exceptional treatment. (3) Neither Poland nor Brazil should be made permanent members at present, but Poland should be given a non-permanent seat as soon as possible.[7]

Two major obstacles were immediately apparent at Geneva which threatened to prevent the entry of Germany and thus defeat the first object emphasized in the above instructions. The one was the Polish candidacy for a Council seat, permanent or non-permanent; the other was the veto of Germany announced by Brazil unless she as well was advanced to permanent tenure on the Council. These were manifest obstacles by reason of the positions assumed by Sweden and by Germany. The former had from the beginning definitively announced her opposition to all plans for enlarging the Council; the position of Germany was equally clear and as firmly stated. She had applied for admission to the League, and her entry had been solicited, upon what seemed to be obvious and well-defined understanding. If in the meanwhile, through unexpected events, important alterations were made in the structure of the League modifying the original situation, she would have to be excused. She would withdraw her application.

In the face of this situation, certain of the chief negotiators among the "Locarno Group" spent a busy week in efforts to find a place for Poland. Some of them were irritated beyond measure by the policy of Mr. Unden. As for Brazil, her threat was apparently disregarded, although voiced in monotonous cadence by M. de Mello-Franco whenever he was fortunate enough to catch an ear. Finally, M. Vandervelde (Belgium) proposed to the Locarno Powers that all claims to permanent seats be renounced, and that a non-permanent seat be created to which it was assumed that Poland would be elected by the Assembly.

France and Great Britain accepted this proposal; Germany refused. Sir Austen Chamberlain described the outcome of these efforts as a tragedy. He cited the conciliatory attitude of M. Briand and his own efforts to "go one better." But he felt that Herr Luther's rejection of their proposal had made all efforts to continue the conversations

[7] *London Times*, March 24, 1926.

useless.[8] Had Sir Austen sensed in the beginning the inevitable danger and delay that would be involved in supporting the Polish claim, or had he at once grasped the determination with which Sweden took her position, he might have spared himself a week of exhausting effort; or, at least, he would have been able to direct his energies earlier to the problem raised by Brazil.

To accept the Swedish principle—in reality the League principle—would have meant withdrawing his support of the French, who, as the situation had developed, would then have been in a fair way to experience a "diplomatic defeat" with the loss of the Polish claim. But this would not have been without its salutary consequences. After all, some limit will eventually have to be placed to the demands of France based on the plea of security against Germany.

If viewed as a detached and solitary aspect of the Geneva proceedings, the obstructive tactics of Brazil merit strong condemnation. In the circumstances under which they were displayed, they, however, became less exceptional, if not to some degree excusable. On the question of the admission of Germany to the League, the southern republic had long had mischief up her sleeve; spurred by the activities of some of her associates on the Council, she let it loose. The price she set for her approval of a permanent seat for Germany on the Council was a corresponding position for herself. This, in substance, was using the position on the Council to which she had been temporarily chosen by the members of the Assembly to extort for herself a preferential status within the League. The claim of Brazil that in so doing she was safeguarding the interests of American states in general cannot be sustained, in view of the collective efforts of the latter to dissuade her from her final obduracy. When she continued to press her interests, after the way to compromise and the admission of Germany seemed to have been opened by the proposed withdrawal of two temporary members of the Council, the representatives of ten American states presented M. de Mello-Franco with a resolution which read as follows: "The American delegations, conscious of the gravity of the League's present situation, regardful of the interests of world peace, and realizing how essential it is that the American States should exert their influence to bring about the reconciliation of the peoples of Europe, desire to express to His Excellency, M. de Mello-Franco, the hope that Brazil will take such steps as she may consider most opportune to bring about unanimity in the Council and so remove the difficulties which stand in

[8] *London Times*, March 13, 1926.

the way of its decision."[9] Brazil, however, was not so disposed, and her representative informed the Assembly at its final session that the instructions of his government were final and irrevocable.

In the autumn of 1924 Germany approached, individually, the states members of the Council on the subject of her entry into the League, stipulating as one condition a permanent seat on the Council, and requesting certain exemptions under Article 16 of the Covenant. The replies which she received—none of which were published at the time except that of Sweden—were interpreted at Berlin as being favorable in respect to the matter of a permanent seat on the Council. But the reply of Brazil, portions of which were read by M. de Mello-Franco at the final Assembly session at Geneva, contained the following reservation: "The government of Brazil understands, however, that the concrete questions resulting from the desire expressed by Germany belong to the class of questions which should not be dealt with between one government and another but which should rather be explained and discussed in their entirety by the members of the League and within the League, in order that the various aspects of these questions and the points of view of the other parties concerned may be better known."

This was, as a matter of fact, excellent doctrine. But M. de Mello-Franco was telling only half the story. Germany did, immediately afterwards, bring "within the League" for discussion there in their entirety the questions she had raised over her adhesion. On December 12, 1924, she forwarded to the Secretary-General of the League the memorandum previously dispatched to the states members of the Council together with a note which carried forward the discussions. Her letter to the Secretariat said in part: "As will be seen from the memorandum, a copy of which is appended hereto, the object was to ascertain the attitude of the said governments with regard to Germany becoming a member of the Council of the League of Nations, as well as with regard to the participation of Germany in the sanctions provided for in Article 16 of the Covenant. . . . . The German government has now received the answers to the memorandum. It notes with pleasure that its decision has been accorded full approval in the replies furnished by the Powers represented on the Council of the League. The German government, moreover, believes the replies justify it in concluding that its wish for Germany to have a seat on the Council of the League is being favorably considered by the governments now represented on

[9] *Monthly Summary*, March, 1926.

the Council. On the other hand, as far as Article 16 is concerned, the replies have not as yet led to a satisfactory conclusion."[10]

The Council of the League, of which Brazil was then a member, unanimously adopted on March 13, 1925, the text of a reply to the above communication which was later forwarded by the Secretary-General to the German government. In this note the Council recorded its satisfaction that the German government had "decided to seek the early admission of Germany to the League of Nations" and observed: "The German government have already consulted the ten governments who are represented on the Council and have received authoritative replies from all of them. Any observations which can now be made by the Council, composed as it is of representatives of these same governments, will obviously not be at variance with those replies. The Council is glad, therefore, to learn that, with one exception, the replies are satisfactory to the German government."[11]

In discussing the obligations of a member of the League under Article 16 of the Covenant, the reply continued: "The Council would further remind the German government that a member of the League, and of the Council, would always have a voice in deciding the application of the principles of the Covenant." And the communication concluded in the following cordial terms: "In conclusion, the Council wishes to express to Germany its sincere wish to see her associated in its labors, and thus play, in the organization of peace, a part corresponding to her position in the world."

In none of these preliminary negotiations through the League did Brazil raise the "point of view" which she later maintained at the March Assembly. Whatever reservation was made in her reply to the original memorandum of Germany, she certainly, as a member of the Council which drafted the note cited above, cordially endorsed the entry of Germany into the League and took no exception to the general assumption that Germany should be awarded a permanent Council seat.

The foregoing brief review of a situation of infinite complexity at Geneva indicates only some of the decisive forces which were there brought into play. And it presents, obviously, the worst side of the picture and the one which has done most to endanger the prestige of the League. The consequences of the March Assembly have in some

[10] *Monthly Summary*, December, 1924.

[11] *Monthly Summary*, March, 1925. The "one exception" obviously refers to the unsatisfactory nature of the replies respecting Article 16.

instances been magnified and distorted, but it is plainly apparent that a problem of the first order exists in connection with the evolution and expansion of the League. On the other hand, predictions of the enfeeblement of the League or of its early demise are premature. In truth, the League has become an organization of such vitality and force that positions of authority in its deliberations are regarded as being tremendously worth while. From a certain standpoint, all this struggle over Council seats is the most genuine testimonial yet offered to the position which the League has acquired in international affairs. With the increasing importance of that position there is nothing essentially sinister or surprising in the appearance of discordant and conflicting interests in proceedings at Geneva. These things exist in the normal relations of states; it is the function of the League to bring them within its orbit and to seek their adjustment through its processes. No expectation of the League is so unwarranted as that which would demand the settlement of every issue brought before it with complete harmony and invariable justice. In no form of political organization is this pleasant ideal achieved, and to expect it from the League is to soar far above realities. The League has long since proved its usefulness, but the problem remains of promoting among the various nations a common willingness to sustain and increase its functions.

The recent events at Geneva have frequently been described as a conflict between the methods of the League and the traditional practices of the old diplomacy. This is essentially correct, and the adaptation of states to the new method of doing business is likely to require more time and effort than was originally supposed. During the late war it was remarked that the training of a brigadier-general was likely to cost the lives of a division of men; someone might attempt to compute the cost in League "values" of the training in League methods of certain foreign ministers of state. Sir Austen Chamberlain, admitting even that he is well disposed, is a singularly inapt pupil. M. Briand, who sincerely desires a reconciliation between France and Germany, may be too much of the old school to learn new ways. Mr. Unden, although yet in his early thirties, stands at the head of the class.

The League Commission on the Composition of the Council. As a sequel to the problems raised at the Special Assembly, the Council of the League, at a meeting on March 18, set up a commission for study and report on the future composition of the Council. Provision was made for appointment to the commission of representatives of the present

members of the Council and representatives from the Argentine Republic, China, Germany, Poland, and Switzerland. The commission was instructed in the Council resolution "to study the problems connected with the composition of the Council and the number and mode of the election of its members . . . . to give particular attention to the claims so far put forward by or on behalf of certain members of the League . . . . and to bear in mind the various proposals on the subject previously discussed by the Council or the Assembly, and in particular, the resolutions regarding geographical and other conditions, several times adopted by the Assembly."

The commission met at Geneva on May 10, with representatives present from all of the powers which had been requested to participate in its proceedings. Twelve meetings were held, all of which, with a single exception, were public. At a meeting on May 17, the commission adopted, at its first reading, a draft report to the Council summarizing progress made to date. With the adoption of this report, the Commission adjourned until June 28, at which time it was to proceed to a second reading of the draft report and to a consideration of such problems as yet remained to be studied.

The commission accepted the principle of an increase of the non-permanent members of the Council. As regards the number and method of their election, it suggested the following draft regulations: (1) The non-permanent members of the Council shall be elected for a term of three years. They shall assume office immediately on their election. One third of their number shall be elected each year. (2) A retiring member may not be reëlected for three years commencing with the date of expiration of its mandate unless the Assembly shall decide otherwise, either at that date or in the course of the three years, by a majority of two thirds; the number of members thus reëlected shall not, however, exceed one third of the total number of the non-permanent members of the Council.[12] (3) Notwithstanding the foregoing provisions, the Assembly may at any time by a two-thirds majority decide, in application of Article 4 of the Covenant, to proceed to a new election of all non-permanant members of the Council. In this case the Assembly shall determine the rules applicable to the new election. (4) The non-permanent members shall be increased to nine in number. (5) In order to bring the above

[12] As a transitional measure, the decision provided for in this paragraph may, at the election of 1927, be taken not only with respect to the members whose mandates expire at that time, but also with respect to those whose mandates expire in 1928 and 1929.

system into operation there shall be elected nine members as soon as possible in the next Assembly. Three of them shall be elected for a term of three years, three for two years, and three for one year.

It will be noted that no reference is made in these proposals to an increase in the number of the permanent members of the Council. The commission adjourned this question until its later session and likewise its report on the claims for permanent seats put forward during the Special Assembly. Certain reservations in regard to the whole draft were submitted by the representatives of Brazil and Spain; and the representative of Poland made a reservation in regard to item 2 above, and the representative of Sweden in regard to item 4. The commission expressed the considered opinion that the application of the principle of an increase in the number of non-permanent seats "should have as one of its consequences the attribution of three non-permanent seats to the states of Latin-America."

From the discussions which took place in the commission the conclusion may be drawn that there will be no immediate increase in the number of permanent seats on the Council other than the allocation of a seat to Germany upon her admission to the League. A basis of compromise with the claims of such states as Spain and Brazil appears in item 2 above, which provides for the introduction of a class of "semi-permanent members" who may be reëlected every three years by a two-thirds vote of the Assembly if that body is disposed to continue their mandate. It is probable that the commission purposely adjourned the question of an increase in the number of permanent seats to await the response of Spain and Brazil to this proposal.

Special importance attaches to the recommendation contained in item 3. It draws attention to the authority which the Assembly has under Article 4 of the Covenant, and which it can now exercise, it appears, by a simple majority vote. Indeed it was pointed out at Geneva during the March proceedings that the Assembly was competent at any time to revoke the mandate of a non-permanent member of the Council, and in the future such members who set themselves in solitary and wilful opposition to the wishes of the Assembly may feel the pressure of this authority.

On the whole, the work of the commission to date (May 20) records substantial progress over the difficulties raised in March, and the prospects of the early admission of Germany to the League are correspondingly brighter. Apart from the prospects of adjustment offered through the commission's report, it is improbable that Spain, although

failing to obtain a permanent Council seat, will veto a seat for Germany; and if Brazil persists in her intransigency she will doubtless be relieved of her mandate on the Council by the September Assembly.

The above proposals were placed before the commission by Lord Robert Cecil, who brought to the work of the commission his long experience and resourcefulness in dealing with problems before the League. M. Motta (Switzerland) presided over the sessions of the commission; and its method of work and the results obtained offered a sharp contrast to the March negotiations.

BRUCE WILLIAMS.

University of Virginia.

NEWS AND NOTES

Personal and Miscellaneous[1]

The twenty-second annual meeting of the American Political Science Association will be held at St. Louis December 28–30. The program committee, of which Professor Francis W. Coker, of Ohio State University, is chairman, has planned general sessions at which the following subjects will be taken up: political ideas of recent British socialism; the elections of 1926 with special reference to the general party situation; state interference in private opinion, teaching, and conduct; government and private property, with reference to recent tendencies in doctrine and practice; and the anti-parliamentary movement in Europe. The forenoons will be devoted, as usual, to round tables. The tentative list of topics to be dealt with in these group meetings is as follows: the problems of a scientific survey of crime; research methods relating to the problems of legislative and administrative areas, with particular reference to the question of federal centralization; the question of coöperation between those engaged in practical and those in academic research; scientific method in the study of electoral problems; problems of method in investigations dealing with political parties; an analytical approach to the subject of world politics, in both teaching and research; research problems relating to public opinion; reorganization of courses and curricula in political science along functional rather than descriptive lines; and the problem of orientation courses. Until the end of August the chairman of the committee will be in London, where he can be reached in care of the American Express Company.

A meeting of the executive council of the American Political Science Association and board of editors of the American Political Science Review was held at Iowa City on June 28, in connection with the Commonwealth Conference mentioned below. Reports of officers and committees were heard, including a preliminary report of the special committee on fiscal policy, and routine business was transacted. A committee

[1] Members of the American Political Science Association and other persons interested are invited to send to the managing editor carefully authenticated items or notes suitable for publication in this department of the Review. They must ordinarily be in hand by the middle of the second month preceding the date of publication.

to nominate officers of the Association for 1927 was appointed, as follows: Thomas H. Reed, University of Michigan, Chairman, John Alley, Charles G. Fenwick, H. G. James, and Charles E. Martin. Members of the Association are invited to give suggestions to any member of the committee.

Professor Albert Bushnell Hart, an ex-president of the American Political Science Association, and one of the most widely known of American scholars in the fields of history and government, retired from his professorship at Harvard University at the close of the past academic year. He will devote his time henceforth to travel, lecturing, and writing. His successor in the Eaton professorship of the science of government is Professor Charles H. McIlwain, who has been at Harvard since 1911.

Professor W. W. Willoughby, of the Johns Hopkins University, is in Europe for the summer. He has recently been placed on a half-time basis at the university.

Professor Charles E. Merriam, of the University of Chicago, is spending the summer in Europe. He accompanies Professor Samuel N. Harper to Russia, where Professor Harper is studying the soviet system of civic education, and he will also consult with the representatives of the coöperative survey of civic education which is being conducted under his direction in England, France, Germany, Switzerland, and Italy.

Professor W. W. Cook, of Yale University Law School, will spend the academic year 1926–27 at the Johns Hopkins University as visiting professor of jurisprudence.

Dr. Herman G. James has been made dean of the graduate college at the University of Nebraska, which position he will hold in addition to the deanship of the college of arts and sciences. He is giving courses at the University of Texas during the second term of the summer session.

Professor P. Orman Ray has resigned at Northwestern University to accept a professorship at the University of California.

Professor F. F. Blachly, who spent the past academic year in research work at the Institute for Government Research in Washington, has resigned his position at the University of Oklahoma and has joined the staff of the Institute.

Professor A. B. Hall, of the University of Wisconsin, has resigned to accept the presidency of the University of Oregon. He will assume his new duties in September.

Professor Harry T. Collings represented the University of Pennsylvania at the Panama-Pacific Congress in June, 1926, and later made a brief survey of conditions in Hayti for the American Academy of Political and Social Science.

Professor John P. Senning has been advanced at the University of Nebraska to the rank of full professor. He and Professor L. E. Aylsworth gave courses in the Nebraska summer session.

Professor Leonard D. White, of the University of Chicago, was on leave of absence during the spring quarter and first term of the summer quarter. He is making a survey of the city manager movement and has visited about forty cities in various parts of the United States.

Professor James T. Young, of the University of Pennsylvania, will serve as a member of the Forum of the Sesqui-Centennial Exhibition at Philadelphia, an organization which will bring to this country a number of leading publicists from abroad to address audiences at the Exposition upon the progress of the ideals of the Declaration of Independence in the respective countries represented by the speakers.

Professor J. R. Hayden, of the University of Michigan, secretary-treasurer of the American Political Science Association, accompanied Mr. Carmi Thompson and his associates to the Philippines and will represent the Christian Science Monitor in connection with the inquiry. He plans to visit Indo-China before his return.

Mr. Ifor B. Powell, of the University College of Wales, Aberystwyth, who during the past year has been engaged in a study of provincial and municipal government in the Philippines as Riggs fellow of the University of Michigan, has been awarded a Laura Spelman Rockefeller fellowship to enable him to continue his investigation another year.

Professor Ralph S. Boots, of the University of Nebraska, has resigned to accept a professorship at the University of Pittsburgh. He taught at Pittsburgh in the current summer session.

Professor H. Duncan Hall, formerly of Oxford, and more recently of the University of Sydney, will take over the subject of international affairs as a regular member of the staff of the School of Citizenship and

Public Affairs at Syracuse University next year. Mr. Hall is author of "The Constitution of the British Commonwealth" and has been prominently connected with the Institute of Pacific Relations.

Professors F. G. Crawford and H. W. Peck, of Syracuse University, are to undertake for the New York department of public works a survey of the benefits arising from the construction of public roads. The inquiry will cover not only economic, but also social, benefits as found in several sample counties. It is planned as an aid to solving the problem of tax burdens for public roads purposes.

Professor Orrin C. Hormell, of Bowdoin College, is giving two courses on municipal government in the summer session of the University of Michigan. The charter committee of Oldtown, Maine, has engaged him to draft a charter for the city, to be submitted to the state legislature at the session of 1927.

Mr. Eldon Griffin, who has been pursuing graduate studies in Asiatic history and culture at Yale University, has been appointed to an assistant professorship at the University of Washington, where he will give courses on Asiatic affairs.

Dr. Harold M. Vinacke, of Miami University, has accepted a professorship of political science at the University of Cincinnati. He will have charge of the work in international law and politics.

Mr. George B. Galloway, of the Brookings Graduate School, has accepted a research position with the Philadelphia Bureau of Municipal Research.

Dr. Austin F. Macdonald has been promoted to an assistant professorship of political science at the University of Pennsylvania, and has been given leave of absence for the first term of the coming academic year to make a study, as holder of a Social Science Research Council fellowship, of federal subsidies to the states. It will be recalled that he has already written on this subject.

Mr. H. Sutherland Davidson has been transferred from the political science department at the University of Pennsylvania to the department of anthropology.

Dr. B. F. Wright, Jr., adjunct professor of government at the University of Texas, has resigned to become instructor in government and tutor in the division of history, government, and economics at Harvard University.

Mr. Oliver P. Field has been advanced in the political science department of Indiana University from an instructorship to an associate professorship.

After a year as assistant professor of political science at Western Reserve University, Dr. O. Douglas Weeks is returning to the University of Texas as associate professor.

Professor Norman L. Hill has resigned his position at Western Reserve University to accept an assistant professorship of political science at the University of Nebraska. His courses will be chiefly in the field of international law and relations.

Drs. Morris B. Lambie and John M. Gaus have been advanced to the rank of full professors at the University of Minnesota.

Dr. Carl Friedrich, of the University of Heidelburg, gave courses in foreign politics and International relations in the summer school at the University of Minnesota.

Mr. John G. Heinberg, who has recently completed his work for the doctorate at the Brookings Graduate School, has been appointed assistant professor of political science at the University of Missouri.

Dr. John Dickinson, lecturer in government at Harvard University, has received a grant from the Milton Fund to enable him to complete an investigation of party alignments in Congress, with a view especially to determining the regularity or otherwise of party alignments with reference to political issues.

Professor Frank M. Stewart, who spent last year in study at the University of Chicago, has been promoted at the University of Texas to an associate professorship.

Dr. Irwin Stewart has resigned as adjunct professor of government at the University of Texas to become an assistant solicitor in the State Department at Washington.

Mr. Charles A. Timm, instructor at the University of Texas, will devote the coming year to graduate work at Harvard on the basis of a Carnegie fellowship in international law.

Mr. A. V. Johnston, who served during the past year as a supply instructor at the University of Wisconsin, has been appointed to a position in the political science department of Grinnell College.

Dr. C. M. Kneier, of the University of Illinois, has been appointed to an instructorship at the University of Texas.

Professor Van K. Sugareff has been granted a leave of absence for the second semester of the academic year 1926–27 from Texas Agricultural and Mechanical College in order to continue work on his doctoral thesis at Columbia University.

Mr. Amry Vandenbosch has resigned as instructor in political science at Iowa State College to accept an assistant professorship of government at the University of Kentucky.

Mr. Clifford C. Hubbard, who received his doctorate at Brown University in June, has been appointed professor of history and government at Wheaton College, Norton, Mass.

Mr. Charles R. Erdman, Jr., reader in politics at Princeton University, has been promoted to an instructorship, and Mr. Kenneth Bonner, instructor, has been granted leave of absence for a year in order to do advanced work in international law at Harvard University.

Mr. Jesse P. Watson, of the Brookings Graduate School, has been appointed to a position on the staff of the Ohio Institute, Columbus, Ohio. He will investigate problems in taxation in the state.

Mr. Harold H. Sprout, formerly assistant in political science at the University of Wisconsin, has been appointed assistant professor at Miami University for the coming year.

Dr. C. O. Gardner has been advanced to the rank of full professor at the University of Cincinnati.

Drs. John E. Briggs and Ivan L. Pollock have been promoted to associate professorships at the State University of Iowa, and Mr. Herman Trachsel, who received his doctorate at Iowa during the present summer, has been made an instructor.

Dr. Harold D. Lasswell, who received his degree at the University of Chicago in June, will spend the autumn and winter working with Dr. Elton Mayo, of the Harvard Medical School.

Dr. Charles H. Maxwell has been promoted from an assistant professorship to an associate professorship of political science in the Wharton School, University of Pennsylvania.

Drs. Rodney L. Mott, Jerome G. Kerwin, and Harold F. Gosnell have been advanced to the grade of assistant professor at the University

of Chicago. Professor Gosnell will return in September from fifteen months in Europe, where he has studied problems of voting and of election machinery. Professor Kerwin will presently enter upon a study of overlapping governmental jurisdictions in Chicago, as a part of the regional survey undertaken by the Local Community Research Committee of the university.

The department of political science at the University of Chicago has prepared a report on the conduct of the April primary in Chicago, based on the field observations of about three hundred students.

The political science classes in thirty-seven colleges and universities coöperated during the spring in conducting a mock election and referendum on the prohibition question. The ballots were distributed by the Illinois branch of the Proportional Representation League, and called for the choice of a council of seven to consider the enforcement situation in the United States. In order to determine what relationship, if any, existed between the candidates thus elected and the views of the voters, each student was asked to mark a referendum ballot on the question. The count of the ballots was held June 1 at the University of Chicago under the supervision of Dr. Rodney L. Mott, who acted as consultant in the conduct of the demonstration.

Harris political science prizes, offered to undergraduates of institutions in certain Middle Western states, for essays on designated topics, were awarded in May as follows: first prize ($150) to Mr. Norman L. Meyers, University of Minnesota, for an essay entitled "Japan and International Labor Legislation; second prize ($100) to Mr. John E. Hall, Northwestern University, for an essay entitled "The operation of the Bicameral Principle in the New Mexico Legislature of 1925"; honorable mention to Mr. Thomas B. Roberts, University of Minnesota, for a paper entitled "Benito Mussolini".

American scholars who are giving lectures or conducting discussions in the current session of the Geneva School of International Studies include Dr. Thomas J. Jones, Phelps Stokes Fund, on responsibilities and potentialities in Africa; Professor Alfred Longuell, University of California, on some aspects of American life; Dr. James G. Macdonald, New York, on American foreign policy; Mr. David Hunter Miller, New York, on security and disarmament; Professor James Rogers, University of Missouri, on the influence of American investments abroad; and Professor James T. Shotwell, Columbia University, on disarmament.

A summer school designed especially for secondary school teachers of the social sciences was opened at Syracuse University on June 28. The curriculum and methods pursued were determined by two main considerations, one the explanatory approach to social phenomena and the other the integration of the social sciences. A weekly round table was held, all members of the staff participating while the students constituted the audience. Current problems and events were dealt with in an informal way, illustrating the benefits of approaching phenomena from a variety of angles. The staff of the summer session consisted of the following: Dr. Floyd H. Allport, Professors H. Duncan Hall, Benjamin B. Kendrick, Harold D. Lasswell, Richard H. Shryock, Malcolm Willey, Charles F. Remer, and Mr. W. E. Mosher.

The Cincinnati Bureau of Municipal Research, which has been inactive for a number of years, has been reorganized. The chairman of the board of directors is Mr. George H. Warrington, who is also chairman of the committee which conducted the survey of the government of Cincinnati and Hamilton County in 1924. The Bureau has employed Mr. John Blandford, Jr., as director, and he began work on June 1. Mr. Blandford was formerly director of the bureau of municipal research of the chamber of commerce of Newark, N. J.

At the third annual session of the Furman Institute of Politics, held at Greenville, South Carolina, June 22, 1926, lectures were delivered by Professor Carl J. Friedrich, of the University of Heidelberg, on aspects of German government; Professor A. N. Holcombe, of Harvard University, on state constitutions; Professor Victor J. West, of Stanford University, on the reform of the legislature; and Professor D. D. Wallace, of Wofford College, on the constitution of South Carolina. Round table conferences were conducted by all of these men, and also by Professor William S. Carpenter, of Princeton University. There were various other lectures and round tables.

Of much interest to students of politics and related subjects is the announcement made in June that the United States government will proceed at once with the construction of an archives building, at an estimated cost of $6,900,000. The structure will fill a long-felt need, not only ensuring the preservation of documentary and other materials now too often subject to serious fire hazards, but supplementing the Library of Congress in making records available to scholars. Agitation for such a building has been going on for at least a quarter of a century, and with renewed energy since the World War.

The third institute under the Norman Wait Harris Memorial Foundation at the University of Chicago was devoted this year to Mexico. Its sessions extended from June 29 to July 16 and included lectures and round tables as in the past. The lecturers were Hon. Moises Saenz, sub-secretary of the department of education of Mexico; Hon. Manuel Gamio, former director of the bureau of anthropology and sub-secretary of the department of education of Mexico; Hon. José Vasconcelos, former minister of education of Mexico; and Professor Herbert I. Priestley, of the University of California. The latter made a special trip to Mexico under the auspices of the Institute in May and June. Representatives of several departments of the Mexican and American governments and of business concerns interested in Mexico participated in the round table conferences, which were confined to persons specially informed on Mexican affairs. In connection with the Institute the departments of political science, history, economics, and anthropology offered special courses on Mexican affairs. Information concerning the Institute can be obtained from Professor Quincy Wright, University of Chicago.

The American Historical Association is making a general appeal to the public for coöperation in the raising of an endowment fund of one million dollars. The campaign is in the hands of a large and representative committee, with Hon. Albert J. Beveridge as chairman and Professor Solon J. Buck, of the University of Minnesota, as executive secretary, and with headquarters at 110 Library, Columbia University, New York City. The object of the projected fund is to enable the Association to develop its present activities more adequately, and especially to make possible the fostering of research and publication in connection with such great subjects as the history of international relations, immigration and sectionalism, the historical backgrounds of legal, economic, and social problems, and the European backgrounds of American institutions and life. Full success of the appeal is anticipated; in any event, the degree in which the effort meets with favorable response will afford a significant measure of the readiness of people in these days to support the interests of the humanistic and social sciences.

The fourth Commonwealth Conference, under the auspices of the State University of Iowa, was held at Iowa City on June 28–30. The first Conference in this series, in the summer of 1923, dealt with citizenship; the second, with problems of the electorate; the third, with costs of government; and the one this summer was devoted to local self-

government. Following the procedure of other years, there were five round-table conferences and three general public meetings. The Conference dealt with systems of local self-government, problems of local self-government, the commonwealth and local self-government, the county and local self-government, and the municipality and local self-government. A thirty-two page pamphlet was prepared for the convenience of those who attended, and in it the work of the Conference was outlined in detail. These conferences have been largely attended by graduate students and members of the faculty of the university; public officials and civic leaders throughout the state; teachers of political science from neighboring colleges and universities; and a number of political scientists from various parts of the country have been present as invited guests of the university. Among persons who attended the Conference this summer were: Dr. Charles A. Beard, president of the American Political Science Association, who gave the principal address on the subject "Toleration in Politics"; Professor A. R. Hatton, member of the city council of Cleveland, Ohio; Professor A. B. Hall, president-elect of the University of Oregon; Professor Frederic A. Ogg, managing editor of the AMERICAN POLITICAL SCIENCE REVIEW; Dean Herman G. James, of the University of Nebraska; Professor John A. Fairlie, of the University of Illinois; Miss May E. Francis, state superintendent of public instruction in Iowa; Judge Martin J. Wade, of the federal bench; several city managers; and numerous officers of civic organizations.

The Social Science Research Council announces the appointment of twenty persons as research fellows of the Council for the coming year. New appointments are: 1. Dr. Carter Goodrich, assistant professor of economics, University of Michigan; project, A Comparative and Genetic Study of the Australian Labor Movement. 2. Dr. Martha Guernsey, instructor in psychology, University of Michigan; project, A Study of Human Behavior (particularly in children) in the Light of Gestalt Principles, with special reference to Spatial Perception, "Insight," and Instinct as Factors in Visual-Motor Problems and Situations. 3. Mr. Lawrence R. Guild, professor of economics, Tusculum College; project, Labor Conditions in Places of Less than 10,000 in Ohio. 4. Mr. Norman E. Himes, instructor in economics and sociology, Cornell College; project, History of the Birth Control Movement in England, with special reference to the Development and Work of the Clinics. 5. Dr. Sylvia Kopald, teacher, research worker, and journalist; project, An Approach to the Problem of Democracy and Leadership in Trade Unions through

an Analysis of the Left-Wing Movement in the Needle Trades. 6. Dr. Heinrich Klüver, instructor in psychology, University of Minnesota; project, The Eidetic Disposition in Different Racial and National Groups. 7. Dr. Austin F. Macdonald, instructor in political science, University of Pennsylvania; project, A Comprehensive Field Study of the Grants Made by the Federal Government to the States. 8. Dr. Robert Redfield, instructor in social science, University of Colorado; project, An Ethnological and Sociological Study of a Typical Mexican Village Community as a Contribution to the Background of the Mexican Immigrant to the United States. 9. Mr. Geroid T. Robinson, instructor in history, Columbia University; project, The Peasant Movement in the First Phase of the Russian Revolution, March to November, 1917. 10. Mr. Herbert W. Schneider, assistant professor of philosophy, Columbia University; project, A Study of the Growth of the Political Theories of the Fascisti in Italy, with special reference to their Motivation in Particular Social Groups and Problems. 11. Dr. Walter R. Sharp, assistant professor of political science, University of Wisconsin; project, A Study of Public Personnel Administration in Continental Europe, with special reference to France and Germany. 12. Mr. Carroll H. Wooddy, graduate student, University of Chicago; project, European Nominating Methods. In addition to these twelve new appointments, there are four reappointments for one year, i.e., Mr. Charles W. Everett, Dr. Marcus L. Hansen, Dr. Sterling D. Spero, and Dr. Dorothy S. Thomas, and four reappointments for less than one year, i.e., Dr. Luther L. Bernard, Dr. Harold S. Gosnell, Dr. Joseph P. Harris, and Mr. Simon S. Kuznets.

Professor Munroe Smith, president of the American Political Science Association in 1917, died in New York City on April 13. Born in 1854 in Brooklyn, he was graduated from Amherst College in 1874, from the Columbia Law School in 1877, and from the University of Göttingen, with the J.U.D. degree, in 1880. Immediately thereafter he was appointed instructor in history at Columbia and became one of the small group who under the leadership of John W. Burgess established and developed the first school of political science in the United States. Adjunct professor of history from 1883 to 1891, professor of Roman law and comparative jurisprudence from 1891 to 1922, he was in the latter year appointed to the newly created Bryce professorship of European legal history, which post he held until his retirement in 1924. The honorary degree of doctor of laws was conferred upon him by Columbia University in 1894 and by Amherst College in 1916, and the degree of doctor of jurisprudence by the University of Louvain in 1909.

Munroe Smith was a rare teacher. With a profound knowledge of his subjects, Roman law and legal history, he had the gift of infusing into his presentation system and orderliness, interest and style, with at all times a high appreciation of the relativeness of values. Especially did he impart inspiration to and derive satisfaction from the student of unusual abilities. He was also a rare editor. To him was due in large part the fame of the *Political Science Quarterly*, the first periodical of its kind in the world. He was its first editor, appointed in 1886; and through a period of nearly thirty years thereafter, with one or two brief intervals, he continued to give prodigally of his time and his remarkable literary talents to the laborious task of editing the *Quarterly* and expanding its usefulness.

He was likewise a writer of rare distinction. No doubt his long editorial service was responsible in part for the matchless precision of his lucid English. His *Bismarck and German Unity* (1898) and his *Militarism and Statecraft* (1917) are his two outstanding volumes; but scattered through encyclopedias and scientific periodicals are a large number of articles that attest the versatility of his learning, the catholicity of his interests, the soundness of his judgments, the depths of his scholarship, and the purity and charm of his diction.

Finally, Munroe Smith was a rare personality. A scholar to his fingertips, and innately modest and reserved, he nevertheless enjoyed and contributed to the enjoyment of the society of men. "With wit well natured and with books well bred," he was a delightful companion. His deep affections and strong emotions were always in the leash of his strong and disciplined intellect. In manner one of "the old school," he was in mind youthful, progressive, adaptable. He leaves the stamp of his thought and his personality upon the great university which he helped to create and shape, upon the minds and hearts of a host of colleagues, students, and friends, and upon the broad world of letters and of scholarship. H. L. McB.

Round Table on International Law.[1] The round table on international law was attended by about thirty persons and devoted its time to a study of certain provisions of the recent treaty of friendship, commerce, and consular rights between the United States and Germany. It was felt that this treaty embodied the latest considered statement

[1] This report of the round table conference on international law held at the New York meeting, and led by Professor C. C. Hyde, was received too late to be printed in the May number with the reports of other round tables.

of the policy of the United States on the matters treated; and an attempt was made to compare that policy with the rules of international law in an endeavor to ascertain how far the treaty embodied principles of international law and in what respects it went beyond those principles. Where it was found that the treaty varied from the rules of international law, the desirability of the extension was discussed.

The first day was devoted to a consideration of Articles XVIII, XIX, and XXVII dealing with certain phases of consular privileges and immunities, and a short paper by Professor Irvin Stewart, of the University of Texas, opened the way for discussion of the articles. The provisions exciting the greatest amount of interest were those of Article XVIII exempting consuls from arrest for misdemeanors; of Article XIX definitely limiting the scope of the taxation privilege granted and making specific provision to cover income taxation; and of Article XXVII extending the privilege of free entry to cover the personal effects of consuls introduced at any time during the incumbency of the consular officer.

Three other articles, i.e., XX, XXIII, and XXVI, were taken up on the second day. Several departures from previous practice were noted in Article XX; and there was a rather extended discussion of cases which might possibly arise under the second paragraph of that article, especially under the provisions relating to archives and to the use of the consulate as a place of asylum. Provisions of Article XXIII designed to eliminate some of the vagueness to be found in earlier treaties relating to the problem of consular jurisdiction in cases arising within the territorial waters of one of the contracting states were made the subject of an interesting discussion. While Article XXVI was only touched upon, because of lack of time for a fuller consideration, the desirability of some such provision was appreciated.

On the last day Articles I and VII were taken up. Most of the sitting was devoted to a consideration of the problem of national treatment of shipping and to the provisions of Article VII and of the Senate reservations in that connection. The introduction of the unconditional most-favored-nation clause into the policy of the United States likewise provoked discussion.

During the course of the sessions a few suggestions dealing both with content and with form were made; but in the main it was felt that the treaty represents a substantial and desirable advance upon earlier treaties in the fields which were discussed.

IRVIN STEWART, *Secretary*.

University of Texas.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN COLLEGES AND UNIVERSITIES[1]

COMPILED BY PITMAN B. POTTER

University of Wisconsin

POLITICAL PHILOSOPHY

Natalye Adelma Colfelt; A.B., Vassar, 1921; A.M., Stanford, 1923. The Political Philosophy of the Progressive Party of 1912. *Stanford.*

Clyde W. Hart; A.B., Milliken, 1915; Political Theory in American Literature. *Chicago.*

John Gilbert Heinberg; A.B., Washington University, 1923; A.M., *ibid.*, 1924. The History and Theory of Majority Rule. *Brookings.*

Helen D. Hill; A.B., Chicago, 1921. Anti-Stateist Theory in Recent Times. *Chicago.*

Maud Jensen; Ph.B., Chicago, 1912; A.M., Columbia, 1920. The Social and Political Philosophy of Justice Stephen J. Field. *Brookings.*

Mary Z. Johnson; Ph.B., Chicago, 1924. Development of Democratic Theory since 1848. *Chicago.*

Charles R. Layton; A.B., Otterbein, 1913; M.A., Michigan, 1917. The Political Thought and Influence of John Bright. *Michigan.*

Madge M. McKinney; A.B., Western Reserve, 1916; M.S., *ibid.*, 1919. An Analysis of the Traits of Citizenship. *Chicago.*

UNITED STATES GOVERNMENT, POLITICS, AND CONSTITUTIONAL LAW

Harold Alderfer; A.B., Bluffton, 1924; M.A., Syracuse, 1926. The Personality of Warren G. Harding. *Syracuse.*

M. E. Brake; Ph.B., Chicago, 1920; J.D., Chicago, 1920. Criminal Law Enforcement by Injunction under Federal Legislation. *Chicago.*

Earl Cleveland Campbell; A.B., California, 1923; M.A., *ibid.*, 1924. The Relations of the Cabinet Members with Congress. *California.*

[1] Similar lists have been printed in the REVIEW as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925). It is planned hereafter to print an up-to-date list in every August number of the REVIEW.

Esther Waneta Cole; A.B., Peru State Teachers College, Peru, Nebraska, 1924; A.M., Nebraska, 1925. The American Indian Problem. *Brookings.*

J. P. Comer; A.B., Trinity, 1907; A.M., Columbia, 1915; The Legislative Functions of Federal Administrative Authorities. *Columbia.*

Royden Dangerfield; B.S., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*

Marshall E. Dimock; A.B., Pomona, 1925. The Inquisitorial Powers of Congress. *Johns Hopkins.*

C. W. Fornoff; A.B., Illinois, 1922; A.M., Illinois, 1923. The Political Ideas of James Madison. *Illinois.*

George Barnes Galloway; B.A., Wesleyan, 1920; A.M., Washington University, 1924. Congressional Committees of Investigation. *Brookings.*

P. D. Hasbrouck; A.B., Hamilton, 1918; M.A., *ibid.*, 1924. Parliamentary Methods since Speaker Cannon. *Columbia.*

W. B. Hazleton; A.B., 1921, Macalester. The Subjection of Political Parties to National Control. *George Washington.*

E. A. Helms; A.B., Illinois, 1922; A.M., Illinois, 1923. The Eighteenth Amendment. *Illinois.*

W. S. Holt; A.B., Cornell University, 1920; A.M., George Washington, 1923. Treaties Defeated by the Senate. *Johns Hopkins.*

John C. Jones; A.B., Transylvania, 1911. The Tendency Towards Centralization of the American Federal Government. *Brookings.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations upon the Delegation of Legislative Power. *Wisconsin.*

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BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

The Intimate Papers of Colonel House. Arranged as a Narrative by CHARLES SEYMOUR. (Boston: Houghton Mifflin Company. 1926. 2 vols. Pp. xxi, 471; xi, 508.)

These two volumes contain the story of what was without doubt the most remarkable rôle ever played by a private individual in American political life. The actor who played it might have imitated the example of others and recorded the story in a volume or volumes of conventional "Memoirs" or "Reminiscences" written toward the end of his life, but this Colonel House declined to do, preferring to let his papers as originally written tell their own story. That they might be made to do it the better, he entrusted the task of selection, arrangement, and editing to a historical scholar who was at the same time a personal friend. Professor Seymour has executed the task in an admirable manner. He has done much more than sift and arrange; he has in his own words explained, interpreted, and evaluated motives and events with which *The Intimate Papers* deal.

The contents of the two volumes embrace, in the main, letters or extracts from letters selected from an enormous mass of Colonel House's correspondence with Mr. Wilson from October, 1911, to April, 1917; letters to and from many European statesmen, American ambassadors in European countries, cabinet officers, and other prominent political personalities; and extracts from his own diary, which he began to keep in September, 1912, and continued for a period of seven years. Unfortunately, the President's literary legatee having declined to give permission for the publication of his letters, none of them have been included in *The Intimate Papers.* Professor Seymour, however, gives a list of several hundred letters written by President Wilson to Colonel House, which he says he has utilized and from some of which he has quoted or the sense of which he has translated. Until these letters are published, however, the whole story of Colonel House's relations with the President and the full rôle which he played can never be known. The reviewer is informed that the present volumes will be followed in

due course by two others which will bring the story down to the end of the peace conference.

The earlier chapters deal with House's early life in Texas. There he demonstrated his success as a political organizer, as a director of political campaigns and a maker of governors. From this smaller field of operations in which he had scored a succession of triumphs he set forth in 1910 to conquer new worlds, his particular objective being to find a suitable Democratic candidate for the presidency in 1912. He went first to New York, where he discussed with various leaders the more promising availabilities and after eliminating one after another of them he turned to Governor Wilson of New Jersey, whom he met for the first time in November, 1911, at the Hotel Gotham.

The personal amiability of the governor rather than his intellectual qualities or political ideas impressed him most. Describing his impression in a letter written the following day to his brother-in-law, he said, "Wilson is not the biggest man I have ever met, but he is one of the pleasantest and I would rather play with him than any prospective candidate I have seen . . . . never before have I found both the man and the opportunity." This was the beginning of what Sir Horace Plunkett later called "the strangest and most fruitful personal alliance in human history." They arranged for future meetings, and during the autumn and winter, whenever Governor Wilson came to New York, they met at the Gotham.

Having found the man he thought best qualified to lead the Democratic party to victory, House set actively about securing his nomination. He proceeded at once to clinch the Texas delegation to the national convention; he started a movement to capture the delegations of other states; he advised Wilson as to the character of his speeches; when his candidate emerged triumphant from the convention he threw himself into the campaign to bring about his election; he played the rôle of a general, organizing the forces, planning the lines of attack, and issuing directions to those in command. Wilson elected, House was called in to assist in choosing the cabinet. Apparently, no one else was consulted. There were long discussions of availabilities; proposed names were eliminated for one reason or another; whenever an agreement was reached on a particular candidate, House was requested to sound him out and conduct the negotiations. It was the same with the important diplomatic appointments. House advised that Bryan be offered the appointment of secretary of state, but that it should be intimated to him that it would be a great service if he would consent to go on a mission

to Russia. He also suggested that Bryan should be consulted in the choice of the cabinet. Wilson adopted the suggestion, with a reservation, and commissioned House to go to Miami and talk over fully with the Commoner the tentative decisions reached; but it was to be merely for the latter's information and not a request for his advice.

It is hardly necessary to say that House himself could have had any place in the Cabinet which he wished had he been willing to accept it. But he had never held an office, and it was inconsistent with his principles to do so. He preferred to play the game from the outside—to choose others, but to be free of official responsibility himself. "Had I gone into the cabinet," he said, "I could not have lasted eight weeks." When Bryan later resigned, House was suggested as his successor, but he dismissed the idea, saying that under no circumstances would he accept it even if the President desired it.

But while House was not officially a member of the cabinet, he was in fact an integral and important part of the administration. He maintained intimate relations with the members of the cabinet; when he was in Washington he called on them or they sought him out; when in New York they frequently telephoned or wrote him; he carried on a constant correspondence with them when abroad; he discussed with them the problems of their respective departments and frequently offered suggestions as to the policies which they should adopt; they sought his advice and sometimes the use of his good offices with the President. For example, one of them asked his opinion regarding the expediency of cabinet members making public speeches without the approval of the President; whereupon House discussed the matter with the President and communicated to him the President's opinion regarding it. Another member requested him to ascertain whether the President would object to his giving out to the press his annual report before it went to the President, and the latter's decision was duly obtained and communicated to him. Various members frequently sought his advice regarding appointments and sometimes requested him to "look over" particular candidates and report the results of his inquiries. Occasionally they carried to him their complaints against the policies of the President—for example, the discontinuance of the Friday cabinet meetings—and sometimes he intervened with the President (with success in this particular case) to have the cause of the complaint removed. The President, in turn, sometimes charged him with the delicate task of making known to a particular cabinet member or an ambassador his displeasure at certain conduct. Thus he was requested to caution and

warn Page against what appeared to the President to be a pro-British point of view.

The character and amount of work which thus devolved upon House suggests the advisability, perhaps, of having a "political" member of the cabinet without portfolio. In fact, House was such, even though he had no formal appointment or legal status. He carried on an extensive correspondence with certain of the ambassadors in Europe, especially Gerard and Walter Page. Through him they were kept in touch with what was going on in America and the state of public opinion. The letters which House received from the ambassadors were shown to the President and in this way he was kept informed of events and public opinion in Europe.

House played an important part in formulating the legislative measures which constituted the outstanding domestic achievements of the Wilson administration; he helped to get them through Congress, and determined in large measure the appointments to the new posts which were thus created—especially the appointments to the Federal Reserve Board. At the very beginning of the administration many applicants for offices addressed their appeals to him. When it became more and more difficult for them to reach Wilson directly, because of his isolation and his decision not to discuss personally with candidates their applications, the pressure upon House became tremendous. On one occasion, after his return from an absence of ten days in Washington, he said: "I literally had to wade through my mail to get to my desk. Every office-seeker and every crank in the U. S. is on my trail and I get photographs from all sorts and conditions of people who think in this way they can impress their identity more securely upon me."

A frequent entry in the diary following a visit of the Colonel to the White House was: "After dinner (or lunch) the President and I went into executive session." These "sessions" often lasted for long hours during which appointments, policies, the contents of presidential addresses, diplomatic notes, and other questions were discussed. No other person, not even the most trusted members of the official cabinet, was taken into the confidence of the President to anything like the same degree. The President not only confided in House as in no other person, but he entertained for him a feeling of deep affection which was strikingly shown in the way in which he addressed and concluded his letters to the Colonel.

House, who from first to last addressed him as "Dear Governor" and signed his letters "affectionately yours," entertained for him the same

feeling of admiration and affection. "No human agency," he said in a letter of August 5, 1914, "could make me doubt your friendship and affection. That my life is devoted entirely to your interests, I believe you know and I never cease from trying to serve you." "Call me when you need me," he said on another occasion, "for I am always under orders." It was not unnatural that on occasions House's professions of admiration should verge upon flattery, as when he told the President that his *Lusitania* note had made him not only the first citizen of the United States but of the World, and when, shortly after the outbreak of the war, he wrote the President: "The world expects you to play the big part in this tragedy, and so indeed you will, for God has given you the power to see things as they are." Nevertheless, House did not hesitate to criticize the President at times. He expressed surprise at the casual way in which the cabinet was chosen Houston was never notified of his appointment and got his information only from the newspapers. He criticized the president for his want of interest in the matter of national preparedness, his lack of appreciation of the importance of foreign affairs, his use of language, in certain addresses on foreign affairs, which caused needless irritation among the allied powers, his disposition to dodge trouble instead of facing it, and his intense prejudices against people. "He likes a few," said House, "and is very loyal to them, but his prejudices are many and often unjust." He also found that the President's own characterization of himself as "a man with a one-track mind" was all too true, since he did not seem able to carry along more than one idea at a time. But House entertained a high admiration for Wilson's supreme gifts as a leader, for the analytical qualities of his mind, and for his unexcelled facility of expression; and, as appears from House's preface to *The Intimate Papers*, he still holds this opinion. "Wilson's chief defect," he says, "as I see him in retrospect, was temperamental." In spite of his prejudices which often clouded his judgments, "he was intelligent, honest, and courageous." And he adds: "Happy the nation fortunate enough to have a Woodrow Wilson to lead it through dark and tempestuous days."

Wilson was widely criticized for relying so largely upon the advice of a single person, and he a private individual, instead of depending more upon his cabinet, which contained his official advisers and had a right to be consulted. This criticism was voiced, indeed, by some of his own friends, such as Walter Page. Whatever its merits, it was fortunate that the President's "adviser," "assistant," "partner" or "alter ego"—call him what we may—was so well qualified for so delicate and im-

portant a relationship. He commended himself to the President not only because of his political experience, his sound common sense, and his sympathy, but because he never asked anything for himself and would not accept it when it was offered. He always kept himself in the background and was willing that others should have the credit which really belonged to him.

For these and other reasons, Colonel House was particularly well qualified to play the unique rôle of unofficial confidential adviser. He possessed an almost uncanny ability to foretell effects, and, as events proved, his judgments were uniformly sound. He had ideals in respect to the public service which were lacking among some of the members of his own party. In advising the President in the matter of appointments he urged him scrupulously to respect the civil service law, and he even advised him to retain in the diplomatic service Republican incumbents who were especially qualified by training and experience. On the whole, the remark of Viscount Grey in his *My Twenty-five Years* that House "longed to get good accomplished and was content that others should have the credit," appears to be a not unmerited evaluation of the motive and character of the man.

Altogether, the story of his relations with President Wilson and the extraordinary rôle which he played in the government of the country during the four years covered by *The Intimate Papers* constitutes a remarkable chapter of what may be called the "inside" political history of the United States, and the reading is as fascinating as the events which it narrates are remarkable.

J. W. GARNER.

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Abraham Lincoln: The Prairie Years. By CARL SANDBURG. (New York: Harcourt, Brace and Company. 1926. Two volumes. Pp. xvi, 480; vi, 482.)

These two volumes of nearly a thousand pages deal with the life of Lincoln from his ancestry and birth to the time of his inauguration as president.

One may read many biographies of Lincoln, but he will probably never read a more interesting one than this. There is interest on every page. There is in it so much of poetry and imagination, so much of tradition mingled with fact, that some may doubt whether it be biography at all. It is clearly not within the canons of historical writing. There are no footnotes. No sources are indicated, no citations to

authorities. Its 168 chapters, some of them only a page or two long, are without titles, one chapter beginning on the page where the other leaves off. There are no spaces at chapter endings for references, and no references are given throughout the volumes, the author indicating in his preface that his sources are "too numerous to mention." The inquiring student will wish for them, at places; but the lay reader may not miss them and may follow the moving drama the more eagerly because of the omission. There is a good index, the volumes are fine specimens of the publisher's art, and they are richly and most interestingly illustrated.

Mr. Sandburg is not an historical specialist, but he has seen life in varied forms and he grew up not far removed in space and time from the life that Lincoln knew. He writes for what he is, a story-teller, a realist, an interpreter, an artist. There is the eye of the genius to see, the power of the poet to express. He, therefore, draws vividly and in a masterly way the scenes and the life of the times which he studied. From Sandburg's pages one sees Lincoln as never before, in his homely, rough, pioneer society; and from the poet's pictures one feels that he is seeing the real Lincoln, not in all details, perhaps, but at least in the main features of his life and character. As the reader will not be led far astray from the essential truth, it may be said that the ensemble justifies all the poetic license which the author has employed.

The reader enjoys the poetic prose, whether concerning the black loam of the soil and the growing corn, or the musing, mystic, melancholy soul of Lincoln. There are vivid pictures of the prairie society of New Salem and Springfield, and of Lincoln as he appeared among his neighbors. We see the pigs roaming the streets of Springfield "sniffling for food," and the hotel bus mired in mud to the hub; we see the loneliness of Lincoln's life, and again his rollicking fun with his oafish ways; we see him as a "walking, stalking library" of never-ending stories; as an office-seeking politician, always defeated; we see him riding the circuit of twelve counties, living in hotels and court houses, staying from home six months of the year—with a hint that such prolonged absences came from henpecking and domestic infelicities.

One picture follows another. We see Lincoln sitting in a company of men with his boots off, "to give his feet a chance to breathe," as he said; or at the table neglecting to use the butter knife, much to the annoyance of Mrs. Lincoln; or, in place of the servant girl, answering the ring of the front door bell in his shirt sleeves. We see him on a neighborly visit in a pair of loose slippers, wearing a faded pair of

trousers fastened with one suspender; or, when asked to examine a brief, replying, "Wait till I fix this plug of my gallus and I'll pitch into that like a dog at a root." There are numberless touches such as these, showing how Lincoln had dropped into the life of the people, in close touch "with their homes, kitchens, barns, fields, churches, schools, hotels, saloons, sports, their places for working, worshiping, and loafing."

Amid this life lived the Lincoln of sadness and melancholy; of love, and courtship; of earnest study; of hope, and strange ambition. "It seemed as though he planned pieces of his life to fit together. Then shapes and events stepped out of the unknown and kicked his plans into lines other than he expected. . . . . When dreams came in sleep he tried to fathom their shapes and reckon out events in days to come. Beyond the walls and handles of his eyesight he felt other regions out and away in the stuff of stars and dreams."

Amid the author's rich colors and poetic interpretations one need not look for completeness nor exactness in history, for historic proportions or emphasis. Yet we find Lincoln here in his historic setting, essentially true in bold outline. The author brings into play many facts of prime importance. Not only does he search into the social background and reveal it, but he strikes off in swift dramatic language important events and movements—the Mexican War, the compromise of 1850, the repeal of the Missouri restriction, Mrs. Stowe and "Uncle Tom," the Kansas war, the great debates with Douglas, Dred Scott, John Brown, and the political campaigns. He makes too much of some of these, too little of others. In the account there are errors of detail. He uses unverified tradition; he puts the cost of the Mexican war at one fourth of the proper sum; the Fugitive Slave Law was hardly a "joke in northern Ohio"; he calls Fillmore a Free Soil candidate; he calls Prudence Crandall "Prudence Campbell"; he puts Crawfordsville, Indiana, on the Wabash River; he describes John Quincy Adams as "a sweet, lovable man"—which he was hardly considered as being even by his friends, certainly not by his opponents in congressional debate. And one wonders if Lincoln actually said "Mr. *Cheerman*" as he began his Cooper Union speech. These lapses and other minor ones are not serious defects and may be easily removed in an historical biography; but it would be hypercritical to allow such flaws to mar the effect of the luminous canvas of this poet-biographer.

Lincoln's principles, his love of law, order, and liberty, and his devotion to the Union are here set forth. For these he stood; for these, if need be, he was ready to die. No man stood more stoutly than he

for the radical democracy of the Declaration of Independence. He read Horace Greeley and the Whig Almanac. He read Emerson, Thoreau, and Whitman. The death of Lovejoy, the courage of the Abolitionists, the words of Victor Hugo and Josiah Quincy had their influence upon him. He read how exiles from despotically governed countries were giving up their lives and homes for liberty, martyrs for the freedom of the race. "Lincoln saw and heard. Dreams ran deep in him. He had in him a streak of honest glory; he would live beyond his fleeting day. This want lived in him, far under in him, in the deeper blue pools of him, while he mixed with men with his horse sense, his mathematics, and an eye for the comic."

Such is Sandburg's Lincoln. No matter how extensive may be one's reading on Lincoln he should add these volumes to his list. The perennial interest in Lincoln will continue, and thousands of his countrymen will be grateful to Carl Sandburg for the absorbing volumes which he has added to the Lincoln literature.

JAMES A. WOODBURN.

Indiana University.

Europe and the East. By NORMAN DWIGHT HARRIS. (Boston: Houghton Mifflin Company. 1926. Pp. xiv, 677.)

The Conquest of the Philippines by the United States, 1898-1925. By MOORFIELD STOREY and MARCIAL P. LICHAUCO. (New York: G. P. Putnam's Sons. 1926. Pp. xi, 274.)

It not infrequently happens that a reviewer is asked to bracket two books which have little in common but their differences: such is the present case. Professor Harris has combined, in his valuable volume, diligent scholarship, careful discrimination in the selection of facts, rare sympathy for the peoples of whom he writes, and judicial impartiality. The second volume is mere propaganda.

Mr. Lichauco is fully entitled to champion the cause of his people, and Mr. Storey, as a lawyer, is entitled to act as counsel and present his brief in support of the case: both are entitled to a fair hearing. The very title, however, is offensive, and the presentation of the case constantly provokes recrimination. Technical accuracy of statements and logical validity of arguments constitute no defense for this incomplete and highly partisan exposition, which cannot fail to create false and unfortunate impressions on both sides of the Pacific. Cultivation of mutual understanding and sympathy, of generosity and patience,

will prove more efficacious solvents than half-truths and heated arguments. The vast majority of Americans undoubtedly desire to deal justly and honorably with the Filipinos and to promote their welfare. It is hard to believe that there are many Americans so disloyal to our national traditions that they would not resent efforts to exploit the Filipinos as promptly as they would resent schemes to oppress or defraud our own people. The Philippine question is not one of aims but one of means. Without suggesting what spirit the Filipinos should cultivate, it certainly may be asserted that the American people need to be more perfectly informed on Philippine affairs and to acquire a greater facility for putting themselves in the place of the Filipinos in discharging their responsibility toward them.

To the advancement of these aims, with reference to all Eastern peoples, Professor Harris 's sane and solid volume renders commendable contribution. He opens three avenues of approach to the problems of Asia: anthropo-geography, with just enough history to improve the perspective; description of the changing methods of European administration of Asiatic peoples; and history of international relations in Asia and relating thereto since 1840. In these matters the book is replete with facts and makes heavy demands on the reader's attention. Both for the general reader and for the student, paragraph or marginal headings would have been a grateful aid. On the other hand, the paragraphs devoted to appraisal of the various situations are written in a freer vein, with broad sympathies, but with vigor and just assessment of approval and condemnation. If the judgments of Gandhi or Sun Yat-sen or Governor-general Harrison's administration in the Philippines seem a bit severe, it is nevertheless difficult to question their justice. The same may be said of the comments on some of the dealings of England in India, or of Japan in Korea, or of weak spots in American diplomacy.

Professor Harris has essayed an enormous and exceedingly difficult task and has done his work well—distinctly better, indeed, than in his earlier volume on Africa. Though the author is a professor of diplomacy and international law, his attention throughout is directed to international relations, not to their legal aspects. On the other side, consideration is customarily given to internal affairs of the various countries only to the extent necessary to elucidate the systems of European colonial administration and the diplomatic policies. Professor Harris has produced one of the most useful single volumes on Asiatic affairs; as a summary of the recent diplomatic history of the continent, it is, at least for the moment, without a rival. The opening chapter deserves a

far wider reading than the volume in its entirety will receive. Seldom has "the whole duty of man" with reference to things Asiatic been expounded with clearer vision. It develops in excellent, but concise, prolegomena the thesis of the whole work: "Real progress and ideal international coöperation in the future will come only through the channels of mutual confidence and respect, and of reciprocity among equals."

GEORGE MATTHEW DUTCHER.

Wesleyan University.

China: An Analysis. By FRANK J. GOODNOW. (Baltimore: Johns Hopkins Press. 1926. Pp. viii, 279.)

In this well printed and attractively bound volume President Goodnow presents, in revised form, a series of lectures delivered in 1917 at the Lowell Institute in Boston. They picture, as their author intended they should, "Chinese life against a European background." Not the least of their good qualities is their arrangement under heads that serve to distinguish clearly the various elements of a civilization—physical, economic, intellectual, philosophical, social, and political; while the concluding topics, "modern" and "future" China, point the profound changes that have occurred in China within a generation.

The reviewer has not, since his first reading of *Chinese Characteristics*, found greater pleasure in contemplating with an author the fascinating subject of China than this little book provides. The style is simple, the argument easy to follow, the interest of the author apparent on every page. Salient phases of Chinese life and thought are discussed, with emphasis upon what is old and still remains rather than upon such newer developments as the "renaissance," nationalism, trade-unionism, constitutionalism, etc., which are important but difficult as yet to reduce to generalizations. While the book makes no pretense to presenting fresh material, or to solving China's problems, the reader is assisted in many places to an understanding of variations from his own ways of life by the explanations, historical or otherwise, suggested by the author.

In a few instances the views expressed appear to be somewhat out of date. China's "vast stores" of minerals (p. 22) are no longer reckoned as so significant for her future industrial development. Already it has been demonstrated by the Yangtse valley and the Cantonese workers, as well as by the commercial clubs and the students' organizations, that the Chinese have a "capacity for greater economic coöperation," (p. 60). One may doubt whether "as . . . . economic development

progresses the foreigner will acquire greater and greater influence" (p. 269), even while agreeing with the suggestions that China should devote greater attention to the sciences (p. 106), investigate the possibilities of other than moral sanctions for social decisions (p. 147), and attempt to secure outside assistance for economic development "under such conditions as will not place her in a position of abject dependence upon the foreigner" (p. 180). An interesting statement which seems entirely justifiable is made on page 245: "It would seem, however, to be certain that the Chinese people are definitely opposed to a monarchy."

The author has not followed the accepted romanization of Chinese words, possibly out of a desire to contribute to the good cause of a new system. Nor has he furnished an index. And he has refrained from references to his own personal experiences in governmental circles in China, much to the regret, one may predict, of students of Chinese politics.

HAROLD S. QUIGLEY.

University of Minnesota.

Russia. By NICHOLAS MAKEEV AND VALENTINE O'HARA. (New York: Charles Scribner's Sons. 1925. Pp. xi, 346.)

The authors of this latest volume in the *Modern World* series have produced a remarkably fine study aiming "to enable an accurate judgment to be formed as to the essential factors in the historical growth and political condition of this vast country." Seeking, unlike the host of polemic writers, "neither to condemn nor to extenuate, but to understand," they have attempted a synthesis of the "Western" and "Asiatic" points of view regarding Russia, and have worked with a high and commendable degree of objectivity and detachment. After tracing through centuries the successive pulsations of Asiatic and Western influences in the development of the Muscovite state, they portray with careful erudition the upbuilding of the social structure, administrative machinery, and economic fabric of the Russian Empire in order to explain minutely the *raison d'etre* of the bureaucratic, autocratic, "capitalistic" society of pre-war days. The end of really progressive evolution in Russia, in their opinion, came with the benevolent reforms of Alexander II; thereafter, the repression of the intelligentsia and the neglect of the peasantry left no recourse but revolution as an agency of progress where progress and adjustment to Westernism were long overdue. With painstaking care the divers forces at work in the revolution of 1905—the last warning to the autocracy—are studied, and the

baneful effects of Stolypin's anti-national policy and pseudo-agrarian reforms convincingly shown; by the eve of the war it was evident that a conflict between autocracy and democracy was inescapable. The war, by undermining the intelligentsia and accentuating racial separatism, broke the last evidences of a national consensus and made inevitable the Russian Revolution, which had become, in the words of Guchkov, "a historical necessity."

The authors are at their best in their interpretative analysis of party groups and mentality in the hour of revolution, though their wonder at the disintegration of the Conservatives and Octobrists after the March Revolution seems rather naïve. As a matter of fact, with the disappearance of the autocracy, these parties had lost their reason for existence and could only be expected to efface themselves and to give way to the groups more in keeping with the atmosphere of revolution.

The chapter on the Union of Socialist Soviet Republics will be of basic interest to political scientists. The authors hold that the soviet state system was not the product of the "creative energies of the revolutionary masses of the people, but rather the outcome of haphazard experiments made in the course of administration." In their opinion, the soviet bill of rights merely enumerates rights of the state over the workers; for the soviet state, "rights" of individuals limiting soviet power do not exist. The failure of the soviet state to differentiate political functions is thoroughly in keeping with this position, for "class dictatorship is incompatible with separation of functions and should not be concerned with the object there aimed at, viz., the limitation of state power. Soviet power must be absolute, unlimited, uncontrolled." The authors challenge the truly federal character of the Union, holding that "the federative principle, in the usual sense of the term, is irreconcilable with the despotic character of the soviet state system," and believing that every trend in soviet constitutional development is toward the continuous centralization of soviet power. Such, they believe, is the import of Bolshevik national policy, though this, in the reviewer's opinion, is seriously open to question. Finally, the authors trace the development of the new bicameralism in the Union, the operation of the soviet electoral system, and the omnipotent rôle of the Communist Party.

On the economic side, the trial and abandonment of war communism are noted *in extenso*, as also the inception of the New Economic Policy and its "complete and tragic failure." It is the authors' belief that a newer economic policy is in the making, which will veer still further

away from communism. "The necessary peace and tranquillity in the country," they conclude, "can only be secured by the reëstablishment of a democratic system of government and administration where the rulers act on the principle of 'trust in the people qualified by prudence'."

All told, the work is an illuminating one, furnishing an excellent background for a dispassionate understanding of the political, economic, and cultural life of present-day Russia. As such, it should prove an enduring contribution, an objective study of contemporary realities.

MALBONE W. GRAHAM, JR.

University of California, Southern Branch.

The Ordinance-Making Powers of the President of the United States. BY JAMES HART. Johns Hopkins University Studies in Historical and Political Science, Series XLIII, No. 3. (Baltimore: The Johns Hopkins Press. 1925. Pp. 339.)

The ordinance power of the president, long neglected or given only a cursory treatment by students of American government, has at last come into its own. Supplementing the recent admirable studies in the field of administrative legislation by Professors Fairlie, Freund, and Willoughby, the author of the volume under review has given the subject of the ordinance power an extraordinarily comprehensive and thorough treatment. Beginning with a juristic analysis of the governmental process involved in ordinance making, Dr. Hart treats in a most painstaking manner the problems of constitutional development, construction, and practice, and concludes with an analysis of the political implications and safeguards in the exercise of the power. He suggests that even more might have been added with respect to the historical setting and comparative analysis of the problems involved (p. 253).

The scope of the treatise is thus very wide, and may be best indicated in the author's own words: "The ordinance-making power is a problem for the political scientist as well as a subject of study for the jurist, the historian, and the students of comparative government, of administrative organization and technique, and of constitutional law. What is its relation to the theory of democracy as understood in America? To the principle of modern governments that legislation be by or with the consent of the popular assembly? To the increasing growth of the regulative functions of government in the present generation? To the question of the proper relation which should subsist between the legislative and executive branches of government? What are the social

and economic causes of the development of the ordinance-making power in the United States? What are the implications of the power and its potentialities of future development?" (Pp. 252–254.)

In working out his analysis of the president's ordinance power along these broad lines, the author studies each of the powers of the president in considerable detail (especially Chap. IX), and finds some kind of degree of ordinance-making in them all. Even treaties (not studied in such detail) are considered as ordinances, "for the reason that the assent of the regular legislative assembly is not required for their enactment," and because, although "material law," they are not "formal law" (pp. 218–19).

The treatment throughout is primarily legalistic, with an unduly ponderous style, and with the author's points established by elaborate argument and elaborate evidence. For example, the argument with respect to the constitutional ordinance power of the president runs about as follows: (1) Congress is granted "legislative powers," hence the president is excluded from the exercise of those powers that are legislative in character. (2) "Legislative powers" and "laws" meant to the "founding fathers" what they meant to Blackstone, Montesquieu, and Locke. (3) These philosophers used the above terms to refer to rules with respect to private persons, but not to administrative regulations. (4) The general theory and practice (at least Anglo-American) is against executive regulation of even the administrative services. (5) The denial of ordinance power to the president seems therefore to be complete. "We thus see that the denial of 'legislative' powers to the president means a denial of power to prescribe rules of either private or governmental conduct; or to prescribe a penal sanction for the same; or to supplement such rules, even when they are expressed in general terms, by the issuance of completing or enforcing ordinances; or to do any of these things by particular any more than by uniform orders. Not even can he do these things on the excuse that they are necessary to make effective his constitutional powers, or incidental to the performance thereof, or essential for the maintenance of his independence of the other coördinate departments of government." (6) But the president still may have legislative power delegated to him by Congress; and independent legislative power based upon (a) constitutional grants of power not considered strictly legislative, and (b) constitutional grants actually legislative in character but granted nevertheless because of expediency (pp. 202–214).

Although the powers of the president in this field of legislation are thus arrived at in this deliberate manner, they are found, when worked out, to be of rather unusual scope. The limitations can only be surmised; they relate primarily to the scope of the president's discretion and are therefore quantitative in character rather than qualitative; they permit him to determine particular problems, but not policy, even though almost full discretion may be delegated to him on emergency occasions. In other words, they are based upon "practical expediency" (pp. 145–51).

For the purpose of establishing his points in this manner, Dr. Hart makes classifications so elaborate and distinctions so fine as often to bewilder and confuse instead of to clarify. Pardon is apparently not legislation because "an act of particular discretion," while amnesty is legislation because it is regarded as "a discretionary act which applies to all persons within a given class" (pp. 216–17). So he also distinguishes between material laws and material ordinances (p. 53); legislative and sub-legislative power (pp. 156, 166); laws, co-laws, and ordinances (pp. 57, 253); *Ergänzungsverordenungen* and *Ausführungsverordenungen* (p. 58), etc.

Although generally sound in his constitutional history and law, the author occasionally makes statements or assumptions with which one may be inclined to differ. When he declares that "of course they [the makers of the Constitution] did not think of the ordinance-making powers as such" (p. 111), and later that "some of these powers included, both in the minds of the framers and in practical construction under the Constitution, powers which we should term ordinance making" (p. 118), the distinction seems to the reviewer rather too fine. When the lack of any inherent powers in the president is declared to be one of the "undisputed aspects of the product of the Federal Convention of 1787" (p. 112), one feels that the author must have forgotten the so-called Wilson-Roosevelt theory of constitutional construction, and particularly the theories and practices of Roosevelt. The argument that the inclusion of an amending clause proves the belief of the makers of the Constitution in a liberal rule of construction (p. 123) seems to the reviewer quite illogical; and the assumption that the early statesmen intended their generalizations to be modified by time and circumstance (p. 124) is pleasant, but probably unsound. At any rate, the jurist upon whom has been imposed the task of "balancing of historical usage against insistent present need of change" does not seem always to have understood that intent.

The volume is, however, an exceptionally comprehensive, thorough, and scholarly treatment of the subject of the ordinance power, and is a welcome contribution to the literature on the presidency.

CLARENCE A. BERDAHL.

University of Illinois.

Federal Departmental Organization and Practice. By GEORGE CYRUS THORPE. (Kansas City: Vernon Law Book Company, 1925. Pp. 1027.)

This is a comprehensive treatise on the organization and activities of the executive departments and the so-called independent establishments of the national government. It provides a valuable reference work for all interested in the activities of the government, and will be of special service to lawyers and others engaged in practice before the departments and independent agencies.

The book is divided into fifteen parts. The first part contains two chapters on the president and the executive departments in general. Ten parts deal with the executive departments, five of which receive one chapter each, while the treasury department is dealt with in seventeen chapters, the department of the interior in ten, the department of commerce in eleven, and the department of labor in five. Three parts deal with the independent and international establishments, and the last part with the court of claims.

In general, under each of the departments and the more important bureaus and independent establishments, there is an account of its history, activities in general, distribution of duties, organization, publications, and rules of practice.

The distribution of emphasis indicates that the work has been prepared with reference to lawyers appearing before the various offices rather than the general student. The chapters on the president and the departments of state, war, justice, post-office, and navy are comparatively brief. On the other hand, in Part III on the Treasury there are four short chapters dealing with the minor activities under the under-secretary and assistant secretaries, and, five chapters on the internal revenue service and its more important divisions. In Part IX there is one short chapter on the weather bureau, and another chapter of equal length on all the other bureaus and divisions of the department of agriculture.

There is no evident plan in the treatment of the independent establishments. They are not given in chronological order, nor is there any

attempt to group together those whose work is similar or closely related. Part XIV on independent establishments under Congress has only one chapter, on the joint committee on printing, and there is no account of the government printing office, library of congress, the capitol grounds, or the botanic garden.

The work is distinctly descriptive, and the author has not undertaken any criticism either of the organization or the quality of the administrative services. At the same time, it forms an important contribution to a knowledge of the government, and will be useful to all students of public administration.

JOHN A. FAIRLIE.

University of Illinois.

An Introduction to the Study of the American Constitution. A Study of the Formation and Development of the American Constitutional System and of the Ideals upon Which it is Based, with Illustrative Materials. BY CHARLES E. MARTIN. (New York: Oxford University Press. 1926. Pp. xliii, 440.)

As suggested in the sub-title, this book is an historical treatment of the Constitution, with careful analysis of principles and cases. Part I is devoted to "The Formation of the American Constitutional System." This discusses the constitutional history of the colonies, the Revolutionary period, and the constitutional convention. Part II is on "The Development of the American Constitutional System," and discusses principles in their historical setting. The type treatment is analysis of Supreme Court cases. Each is preceded by a brief but clear statement of conditions and facts connected with the case, and consists of a rather full outline of the opinion and decision of the court, usually with dissenting opinions. Comparatively few of these cases belong to the twentieth century. Part III is on "The Spirit of the American Constitution." Still following the plan of historical treatment, the author discusses "fundamental legal rights," "principles and ideals of American constitutional government," and "American international ideals."

Dr. Martin's account is exceedingly compact, especially in Parts I and II. This treatment has the advantage of giving much material in short compass; and the book is a veritable repository of valuable material on colonial constitutional origins, proposals and criticisms in the Convention, and facts, arguments, and opinions of important constitutional cases. The author's plan of avoiding personal comment is particularly successful in the difficult chapter on "Recent and Con-

temporary Constitutional Controversies"; many interesting controversial problems of a constitutional nature are considered in a skillful, unbiased way. An appendix gives some lists and suggestions that are not easily accessible elsewhere to students.

The author states that he writes for both students and the general reader. His volume is particularly adapted to college study and for reference. The analytical treatment that predominates in Parts I and II brings to attention the main points for consideration, which are discussed clearly. One regrets that at times this analysis obscures the dominant idea to be developed. Occasionally all but the most careful readers will lose the final decision or conclusion, either in the proceedings of the constitutional convention or in the settlement of a problem brought before the Supreme Court. It is questionable whether what the author well calls "the vital constitution" can be fully explained in a volume which is preëminently historical.

This book is an exceedingly valuable addition to the really usable books on the study of the American Constitution.

ROSCOE LEWIS ASHLEY.

Pasadena Junior College.

The Supreme Court and Minimum Wage Legislation. COMPILED BY THE NATIONAL CONSUMERS' LEAGUE. (New York: The New Republic. 1925. Pp. xxviii, 287.)

Constitutional Law. BY CHARLES W. GERSTENBERG. (New York: Prentice-Hall, Inc. 1926. Pp. 562.)

The first of these volumes brings together seventeen articles previously printed in various professional journals, mostly legal, treating of the Supreme Court's decision in the case of Adkins v. The Children's Hospital, 261 U.S. 525 (1923), invalidating the District of Columbia minimum wage law. There is a brief introduction by Dean Pound discussing in its broader aspects the philosophy and technique of the courts in due process cases. The opinions of the majority and dissenting justices are printed in an appendix. The papers themselves are of varying length and character, ranging from the thorough and brilliant article by Thomas Reed Powell in the Harvard Law Review to an unsigned three-page note in the St. Louis Law Review. Only one of the seventeen writers has a good word to say for the decision of the Court or the opinion of Mr. Justice Sutherland in which it is embodied. His legal philosophy, assumptions, logic, analogies, and precedents are all attacked

from almost every conceivable point of view. The volume puts at the disposal of students of constitutional law and social legislation the most valuable symposium we have on the problem of the judicial review of police legislation under due process of law. The Adkins case is discouraging to those who desire to see a liberal development of our constitutional law. Perhaps, however, we are justified in hoping that the well-nigh unanimous disapproval voiced in the professional journals and brought together in this volume will have a salutary influence, if not upon Mr. Justice Sutherland and his colleagues of the majority, at least upon the generation of law students from whom, after the lapse of years, the Supreme Court will be recruited.

Professor Gerstenberg's volume is designed to serve as the basis of a brief course in constitutional law. It is primarily a casebook, containing 58 decisions of the Supreme Court occupying some 400 pages. These are classified into eighteen chapters of unequal length covering the outstanding topics in the field. While it would be easy to argue about the inclusion or omission of particular cases (neither child labor decision is included), on the whole those brought together provide a very serviceable body of material, comprising not only a good many of the great historic decisions which are the *sine qua non* of any such compilation, but twenty-four decisions handed down during or after 1920. The cases are prefaced by 126 pages of introductory text divided into twenty-one very brief chapters. Within such compass it has obviously been impossible for the author to do more than state in compact form some of the more obvious principles of constitutional law. For this reason the reviewer doubts whether he has actually achieved the purpose stated in the preface of providing the "minimum information to be retained by the well-informed law student." The footnotes contain references to cases, books, and articles, as well as material supplementing the text. They constitute one of the most valuable features of the book, and they would be of even greater use if indexed. The book will undoubtedly meet the needs of many teachers in the field.

ROBERT E. CUSHMAN.

Cornell University.

A Selection of Cases on the Law of Municipal Corporations. By CHARLES W. TOOKE. (Chicago: Callaghan and Company. 1926. Pp. xliv, 1335.)

Some indication of the multitudinous complexity of the law relating to municipal corporations in the United States, as determined by judicial decisions, may be gained by a brief examination of the five and six

volume treatises on this subject by Dillon and McQuillin. Dillon's table of cases alone covers 494 pages, listing something like 15,000 cases. At the same time the case study of this subject in law schools has been based on comparatively limited collections of cases, intended for half-year courses. Beale's collection of 680 pages has been the most important.

Professor Tooke has prepared a much more extensive collection intended for a full year course, with extracts from about four times as many cases as Beale and not more than one third of the cases in Beale's collection. This larger scope has enabled more attention to be given to many topics, including such matters as local taxation and extraordinary remedies, as well as new problems connected with home rule charters, commission government, zoning, and excess condemnation. All of this makes possible a more adequate consideration and understanding of the subject.

From the point of view of the student of political science, the question may be raised whether in such collections a place should not be found for selected constitutional and statutory provisions, which constitute the original data on which the commentary in the cases is largely based. Even the law student might be benefited by a stronger emphasis on the dependence of many decisions on the terms of the constitutions and statutes.

For a thorough comprehension of this subject, there is also need for a series of treatises, correlating the constitutional and statutory enactments with the judicial decisions in particular states. This would pave the way for a more satisfactory statement of this branch of law for the United States as a whole.

JOHN A. FAIRLIE.

University of Illinois.

Life and Letters of Thomas Jefferson. By FRANCIS W. HIRST. (New York: The Macmillan Company, 1926. Pp. xx, 588.)

If the English biographer of Hamilton, F. S. Oliver, has caricatured his hero's chief opponent, as Mr. Hirst (the first English biographer of Jefferson) asserts, the latter has idealized him. Old friends and relatives will recognize and doubtless be gratified by the flattering portrait, but critical observers will agree that the likeness is not striking. As a corrective, Mr. Hirst's book will have value in England, and perhaps even in America; and it will recall to old admirers Jefferson's abiding charm. For a critical estimate of his statecraft, however, one must go elsewhere.

Mr. Hirst views Jefferson and the other Revolutionary patriots through the benevolent spectacles of Trevelyan and the English Whigs. He admires Jefferson because of his hostility to tyranny and places him high on the roll of honor among Whig heroes. In interpreting the American Revolution, the English writer does not attempt to make out a case for the British government, as so many able American scholars have done with no inconsiderable success in recent years. He repudiates George III and his ministers and all their works and betrays no adequate conception of their imperial problems. Praise of the Declaration of Independence he regards as superfluous; criticism of it, as vain. American scholars have been less hesitant and have criticized it as a document essentially political, and in its implications by no means fair. Mr. Hirst says that, but for George III, Jefferson would have remained an Englishman. We, however, should put a considerable amount of blame, if blame it be, on the American radicals and Jefferson himself. The flame of freedom was doubtless purer in the breast of Jefferson than in that of Samuel Adams, let us say, and we admire him greatly, but we gladly yield to Mr. Hirst the task of defending the entire justice of American revolutionary claims.

Jefferson's hostility to Hamilton has been explained much more accurately by Hirst than Oliver, but one can turn with greater profit to the scholarly and illuminating, if not entirely convincing, writings of Beard, and to the brilliant pages of Bowers' *Jefferson and Hamilton*. Mr. Hirst apparently has no fault to find with any phase of Jefferson's administration. He mentions Henry Adams, but refers only casually to the Jeffersonian assault on the judiciary and the constitutional inconsistencies which are described so fully in Adams's monumental work. He is at his best when dealing with the questions of American trade with England and Jefferson's much-mooted commercial policy, for here he speaks apparently from first-hand knowledge. He points out that there was strong English opposition to the orders in council, claims that Jefferson was fully justified in playing for time, and feels that he "successfully maintained peace with honor during a world war." In the absence of adequate investigation of these questions by critical scholars, one cannot be sure; but it is easily possible that Mr. Hirst's high praise of Jefferson's statesmanship during the trying days of the embargo will in time be considerably justified.

Mr. Hirst's sympathetic treatment of Jefferson's life in retirement merits general approval. He has read Jefferson's letters with discriminating eye and has illustrated anew the freedom-loving spirit and

universal genius of the most extraordinary of all American statesmen. Jefferson the architect, landscape gardener, host, letter-writer, educational statesman, here commands admiration unreserved. But the Oracle of Monticello, as he rambled over his beloved estate or sat musing before his fire, undoubtedly cast back upon his long and brilliant career a glance much more critical than that of his enthusiastic English admirer.

DUMAS MALONE.

University of Virginia.

International Relations as Viewed from Geneva. By WILLIAM E. RAPPARD. (New Haven: Yale University Press. 1925. Pp. x, 228.)

La Communauté Internationale. By JESSE S. REEVES. (Paris: Librairie Hachette. 1925. Pp. 90.)

To undertake to review a book by the familiar process of "examining" it, reading the table of contents and the conclusions, and dipping into the text here and there, and then to find the work so illuminating and compelling, in style and attitude and subject matter, that he is unescapably induced to read the whole thing word for word is an ironical penalty against which no reviewer can reasonably protest. That has been the experience of the present reviewer with Professor Rappard's lectures delivered at the Williamstown Institute of 1925.

For the style the following may serve as example: "I even suspect that the desire to disguise unpalatable facts, which animates League enthusiasts, and which not infrequently leads them even to assertions of fact held to be opportune but hardly acceptable as authentic, has done more harm than good to their cause in the minds of thoughtful men and women." Comment would be superfluous.

As for subject matter, the book is a book on the League of Nations. The title is simply inaccurate. No attempt is made to deal exhaustively with the League, of course; but still less is any attempt made to deal systematically or comprehensively with general international relations as viewed from Geneva. The book might fairly be called "The League of Nations in Real Life."

Finally, it appears to a political scientist that what was, apparently, the author's effort to be realistic and clear has led him to be slightly unrealistic and confusing. There are not three Leagues at Geneva as the chapter titles indicate (League to Execute the Peace Treaties; League to Promote International Coöperation; League to Outlaw War),

but one. It is difficult enough to convey to people the unity of the system of institutions which includes the Council, Assembly, Secretariat, Court, and Labor Organization; another subdivision in terms of function is bound to lead to further confusion in many minds. Furthermore, it seems to the reviewer that the functions named are rather thoroughly interwoven in practice and well distributed, in piecemeal fashion, among the various organs of the League. He submits therefore, with all due deference, that a more accurate idea of the League could be provided by a more unified mode of presentation.

Once again, however, let it be said that the volume adequately expresses both the exceptional analytical power and the devastating realism for which Professor Rappard is justly famed among all who have had the good fortune to come in contact with him.

Professor Reeves, on the other hand, directed his efforts, in the lectures delivered before the Academy of International Law at The Hague in the summer of 1924, to a quite different task. He undertakes the function of "creative juristic thinking," to employ Dean Pound's suggestive phrase, with the object of discovering or thinking out the bases, the nature, and the more important juristic implications of the international community. The measure of attention given to Grotius and his successors is incidental to the main purpose, which is not historical nor descriptive nor yet analytical so much as it is synthetic and interpretative. In place of consent, the author posits the factual relations among the states of the world, or rather the interests which these relations engender and the modes of attitude and action which these relations compel, as the basis of the international society and its law. This is a realistic critique of the consent theory with a venture into a new metaphysic at the close. It is arresting and provocative; the reviewer believes too firmly in the reality of the "fiction" of consent to regard it as sound, or to believe that it can be connected firmly with the content of admitted international legal bonds without employing the concept of consent. Would it not be more accurate, and even more hopeful in the direction of beneficial development of the law, to recognize that agreement among the states of the world, and nothing short of that, is what is needed to make the law of nations what it should be, and that the difficulty of securing international agreement can be overcome least effectively of all by directing attention away from that factor and that need in international relations?

PITMAN B. POTTER.

University of Wisconsin.

Latin America and the War. By Percy Alvin Martin. (Baltimore: Johns Hopkins Press. Pp. xii, 582.)

This book "consists of an expanded version of a series of lectures delivered at Johns Hopkins University in 1921 on the Albert Shaw Foundation." As such, it takes its place among ten other notable books published since 1899 under the general title of the Albert Shaw Lectures on Diplomatic History at Johns Hopkins University. The expressed purpose of the author has been "to subject to a somewhat detailed analysis the diplomatic relations of the Latin American republics as affected by the war. This aim has been admirably realized.

The diplomatic problems and policies of the twenty Latin American republics resulting from the World War were of the most varied character. For example, Chile—one of the seven countries which remained neutral throughout the war—engaged in spirited diplomatic controversies not only with Germany but with both England and France. Chile also proposed certain modifications of one of the Conventions of the Second Hague Conference, the principle of which was upheld by Great Britain and vigorously denounced by Germany. Of the five countries which went no further than to sever diplomatic relations with Germany, one of them, Uruguay, proclaimed as a principle of its future international policy that no nation of the western hemisphere, "which in defense of its own rights should find itself in a state of war with nations of other continents, will be treated as a belligerent." As regards the eight Latin American nations which declared war against Germany, it may suffice to remark that one of them—Brazil—had a "serious and exasperating" controversy with England, and that between another one, namely Cuba, and the United States there was effective "reciprocal coöperation . . . . in the sending and receiving of troops for military instruction."

Professor Martin's exhaustive research extends to all phases of Latin American diplomacy connected with, and Latin American participation in, the war. In addition, it brings to light much information concerning the economic contributions of the various Latin American countries to the great struggle. The book is a notable addition to the literature of the war period.

Charles W. Hackett.
University of Texas.

BRIEFER NOTICES

Pluralist Philosophies of England and America, by Jean Wahl, translated by Fred Rothwell (The Open Court Publishing Company, pp. xvi,

324), will be primarily of interest to the political theorist, for the political implications of pluralism are nowhere made explicit. It is a capable analysis of the most dominant note in modern philosophy—pluralism—as to its origins and contemporary development. Before M. Wahl has done with the modern schools, the pluralistic thread seems to have escaped and become so protean as to include every attack on idealism as well as on monism. Pluralism is set in its proper context as a revolt against the dominant Neo-Hegelianism of the last century. M. Rénard points out the indebtedness of the pragmatic pluralists to Fechner, Lotze, Ménard, and Renouvier, on the continent, and to John Stuart Mill, Bain, Shadworth Hodgson, and Peirce in this country and in England. An exhaustive consideration of the modern pluralists, from James on, leaves little out of account in the connection of ideas except their economic and social contexts. M. Wahl pursues the method of tracing spiritual genealogies without much attempt to bring his world of ideas down to the shifting scene of the stage upon which it must be played. (W. Y. E.)

The most recent contribution to the Political Science Classics, issued under the general direction of Lindsay Rogers and published by Alfred A. Knopf and Company, is a two-volume edition of William Godwin's *An Enquiry Concerning Political Justice* (pp. xliii, 255; vii, 307), edited and arranged by Raymond A. Preston. The text which has been followed is that of the first edition, and there is an introduction of some twenty pages setting forth the main facts in Godwin's life, the bases of his political theory, and the chief objections to his ideas. The justification for the present edition lies in the fact that *Political Justice* has never been reprinted, and also in the fact that, in the words of the editor, "William Godwin is one of the men who most deserve a rereading in our time. With a reputation scarcely equalled among his contemporaries in the last decade of the eighteenth century for boldness, sagacity, and acumen, he was so completely submerged in the conservative reaction of the following decade that in 1811 Shelley, soon to become his son-in-law, learns with 'inconceivable emotion' and apparent surprise that the author of *Political Justice* is still alive." Political scientists are greatly indebted to the publishers for this and the other revised editions that are to appear.

America in Civilization, by Ralph E. Turner (Alfred A. Knopf, pp. 411), has the ambitious purpose, announced on the title page, of "introducing students to life." Ordinarily such an announcement, followed by

the prefatory confession that the book "frankly represents an attempt to provide a text-book for introductory college courses" . . . . "designed to orient . . . . incoming students," is followed by an ill-digested mass of hortatory sociology. The present volume is a happy exception to the rule. If it is a compilation and a condensation, it is also a very happy interpretation of a wide range of carefully selected aspects of man as a social animal. It is inevitable that a few errors and many dubious conclusions should mark an encyclopedic work of this type, which starts with "the physical environment" and works up the evolutionary scale of the social heritage by way of historical considerations of the family, of economic organization, of education, of religion, and of politics. The latter aspect will naturally be of peculiar interest to political scientists. Taken as a test of the other excursions into special fields, it shows a volume of real usefulness. It gives a sketch of the historical development of political institutions, pointing its moral with American development as a conclusion. One may not entirely accept the precepts offered, but one must admit that a single chapter could hardly have done more. The selected references at the end of each chapter are entirely adequate to their purpose, perhaps too exhaustive and not selective enough. The readings given seem to the reviewer not always to be so happily chosen.

J. H. Nicholson, in *The Remaking of the Nations* (E. P. Dutton and Company, pp. x, 276), records the round-the-world tour of an Albert Kahn fellow with a gift for keen and often illuminating observations on the post-war political currents which are reshaping the world. Along with a great many generalizations and rambling anecdotes of varying degrees of interest, one gets a body of information about Oriental life that is very essential even to intelligent guess-work about such a chaos, for instance, as contemporary China. The author's method is frankly casual, and the book has the appearance of having been very loosely strung together on the chronology of his tour. He dismisses Europe with a brief recital of impressions of the two categories of states—first, those that have shrunk, with special reference to Austrian efforts at reconstruction, and second, those that have grown, including Poland and Czechoslovakia. He is equally hopeful about the *Jugendbewegung* and about Fascism, the one for Germany, the other for Italy, of course. But there is a pessimistic note at the conclusion of his survey of the new European states-system: "Can Europe afford this complex of franchises which has been set up in the name of liberty, and the duplication of services which it implies? Or must the omni-competent state,

entrenched behind its political and economic frontiers, give place to something less absolute? . . . . Or will the whole machinery of the new European states-system collapse under its own weight?" When he turns to the East for light, Mr. Nicholson can discern but a faint glow. He notes the constantly increasing economic and cultural penetration of India, Japan, and China by occidental industrialism. He has some interesting speculations as to the strength of Hinduism, Buddhism, Shintoism, Mohammedanism, and Christianity; and equally attractive estimates of the educational systems of the rising nations of the Orient, from Egypt east. On the other hand, the validity of any estimates based on such casual observations as can be made in the course of a year's world tour can be itself estimated from Mr. Nicholson's treatment of North America, taken from Vancouver to New York in his customary stride. "Space, speed, and a love of mechanism" he writes, "seem to me the most characteristic traits of American civilization."

(W. Y. E.)

The Macmillan Company has published the first two volumes of *The Cambridge Ancient History*, edited by J. B. Bury, S. E. Cook, and F. E. Adcock (Volume I: Egypt and Babylonia to 1580 B.C.; Volume II: The Egyptian and Hittite Empires to c. 1000 B.C., pp. xvii, 704; xxv, 751, also 4 pp. of corrections to Volume I). Like the other series of Cambridge Histories, the present tomes are composed of chapters written by various scholars, all of them Englishmen, in the present instance, save Professor Breasted. The chapters vary greatly in size, also in method, but a collaborative work must needs be judged by standards other than those employed to criticize the product of a single pen. The student of political science in general and of comparative government in particular will find much to interest him in these volumes. The discussion by H. R. Hall (Vol. I, Chapters VII and VIII) of the growth of the autocratic power of the Egyptian Pharaoh, the policy of the government, and its decline, affords luminous parallels with mediaeval developments, as one can actually follow stage by stage the genesis of feudalism in Egypt. The growth of the Babylonian city-state with its half-despotic, half-theocratic government (especially Volume I, Chapter XIV, by R. Campbell-Thompson) is extraordinarily interesting for the student of municipal government, while those who deal with international law will find much to fascinate them in the diplomacy of the Tell el-Amarna period (Volume II, Chapters V–VIII, by J. H. Breasted, and Chapter XI, by H. R. Hall). There are maps (mostly outline), and good though brief

bibliographies. It is unquestionably a most useful and valuable work. The third volume in the series, covering the period from 1000 B.C. to the Persian Wars, has just come from the press and will be noticed in the next issue of the REVIEW.

The National Institute of Public Administration has made a distinct contribution to the field in which its chief interests lie through the publication of *A Bibliography of Public Administration* (pp. xiii, 238) by Sarah Greer, librarian of the organization. The compiler presents her material under eleven general headings: general administration, political parties and elections, civil service, public finance, public works, public utilities, public health and sanitation, public welfare, public safety, and the administration of justice and education. The Institute has also brought out as one of its "Studies in Public Administration" a monograph on *The Post-War Expansion of State Expenditures* (pp. 123) by Clarence Heer. This latter work is an analysis of the increase between 1917 and 1923 of the cost of state government in New York and contains the following conclusions: Post-war expansion of expenditures in New York was not due to waste and extravagance, nor to unwise construction projects, the too-liberal issuance of tax-free bonds, nor the expansion of state regulatory activities. Almost forty-four per cent of the aggregate increase was explained by the advance of prices and wages, and was therefore merely nominal; about sixteen per cent was due to the financing of capital outlays out of current revenues instead of bonds, and about twenty-two per cent of the increase was accounted for by compulsory expenditures in the case of highways, schools, relief to disabled veterans, and operating expenses of state institutions made necessary by the increase in population and in the numbers of automobiles, school children, defectives, and delinquents in the state. This left only eighteen per cent of the total increase which could be attributed to purposes over which the state had any real option, and almost half of this was for new educational activities such as continuation schools, Americanization work, etc. Another important item classed as optional was an increase of $700,000 on account of the state police established since 1917.

Among recent issues in the Columbia University Studies in History, Economics and Public Law of interest to the readers of this journal, are *Governmental Methods of Adjusting Labor Disputes*, by Ting Tsz Ko (pp. 221); *The Philippine Republic*, by L. H. Fernandez (pp. 202); and *Labour and Nationalism in Ireland*, by J. D. Clarkson (pp. 502). Dr. Ko is critical of compulsory arbitration of labor disputes. Provisions

for the enforcement of decisions have not been strictly observed, and, in his opinion, the greatest weakness of compulsory arbitration "is the failure to fulfill the purpose which it professes to achieve." It is his judgment that "where industrial development has reached a highly complex stage, and where the working population is large, compulsory arbitration is impracticable. The question of efficiency in administration weighs heavily against its adoption." Mr. Fernandez's monograph deals with the Philippine revolution against Spain, and especially with the *de facto* government which existed for a short time in the Philippine Islands prior to 1900. He believes that it is unwise to draw inferences from this experience as to the capacity or incapacity of the Filipinos for governmental administration, because the "Republic" was "born of a revolution" and "lived in an atmosphere of revolution."

The Bobbs-Merrill Company has brought out the *Correspondence of John Adams and Thomas Jefferson: 1812–26* (pp. 197), selected and with comment, by Paul Wilstach. In this little book the editor skims the cream off the correspondence which passed between John Adams and Thomas Jefferson in their twilight years. Old as the calendar measures time, but young in intellectual curiosity and acquisitiveness, these gentlemen of the olden time freely traded ideas on a range of subjects that would stagger even a college professor today—religion, theology, politics, philosophy, natural science. And often they descanted in a spirit that seems refreshingly modern. "While all other sciences have advanced," wrote Adams in 1813, "that of government is at a stand; little better understood, little better practised now, than three or four thousand years ago." In one of their last exchanges the eighty-three-year-old Jefferson boyishly informed his elder crony that he had just been reading "the most extraordinary of all books . . . . Flourend's experiments on the functions of the nervous system in vertebrated animals." No old young man of the present time can afford not to read this book.

James Truslow Adams has concluded his story of New England from its founding to 1850 with a third volume entitled *New England in the Republic, 1776–1850* (Little, Brown and Company, pp. xiv, 438). In this latest book the author carries that section of the country through the Revolution, the adoption of the Constitution, the war of 1812, the Hartford Convention with its threat of secession, and the changing economic conditions that followed the war of 1812 down to the struggle

against slavery. The approaching crisis "tended to diminish the extreme sectionalism as well as the comparative importance of the New England states" and to make that portion of the country more an integral part of the republic, so that the author finds the middle of the nineteenth century an appropriate point for bringing his narrative to a close. Much attention is given to the human side of the history of New England and to the effects of economic and social changes such as the replacement of foreign commerce by domestic manufactures, the development of canals and railroads, and the growth of immigration. In the later part of the book there is an interesting chapter on "Humanitarianism," religion, education, and literature being also included under this heading. The volume is readable from beginning to end.

Lectures on Legal Topics, 1921–22 (Macmillan, pp. viii, 390) contains the second series of lectures delivered at the instance of the New York Bar Association to audiences drawn largely from practicing lawyers in New York City. While the bulk of the articles are of value only to the legal profession, several contain interesting material for the political scientist, especially "Progress in the Law," by Judge Benjamin N. Cardozo; "Sources of Our Law," by Judge Francis J. Swayze; "The Literature of Law," by Sir John W. Salmond, judge of the Supreme Court of New Zealand; "Canadian Constitutional Law," by Rt. Hon. Charles J. Doherty, former minister of justice of Canada; and "A Sketch of Constitutional Law in America," by Judge Augustus N. Hand. The latter is a discussion of the cases and ideas which furnished a background for Marbury v. Madison, while Judge Cardozo's lecture presents arguments for a ministry of justice to serve as an agency of mediation between the legislature and the courts. His proposal calls for a committee of not less than five ministers. "There should be representatives, not less than two, perhaps even as many as three, of the faculties of law or political science in institutions of learning. Hardly elsewhere shall we find the scholarship on which the ministry must be able to draw if its work is to stand the test. There should be, if possible, a representative of the bench; and there should be a representative or representatives of the bar."

The British Institute of International Affairs is to be congratulated upon the endowment of its work by Sir Daniel Stevenson, which places its undertakings on a permanent foundation. The publication of the *Survey of International Affairs, 1924* (Oxford University Press, pp. xvi, 528), by Arnold J. Toynbee, is among the fruits of this endowment.

This volume is somewhat more interpretative of the subjects treated than the *Survey of International Affairs, 1920–23*, and does not confine the presentation merely to a statement of facts. The background of topics treated is also laid in, so far as is essential for clear understanding. In the field of world affairs, security and disarmament, movement of population, and the Third International and Union of Soviet Socialist Republics are discussed. In the geographical areas, Western, Central, Eastern and Northern European, and tropical African matters are reviewed. The appendices contain current documents and references showing work of the League of Nations, laws of the United States on immigration, British correspondence on Russian matters, on reparations, on the Ruhr, and various treaties and pacts. The text throughout is well supported by references to other current material, which is frequently secondary where official documentation is not yet available. The index, always of great value in such a publication, is unusually well done, and the maps are clear and serviceable.

The Doctrine of Continuous Voyage (pp. x, 226) is the title of No. 2, Series XLIV, of the Johns Hopkins University Studies in Historical and Political Science issued in 1926. In this study the author, Dr. Herbert Whittaker Briggs, has sketched the development of the doctrine and shown its application in the nineteenth century, with reference to the leading decisions and opinions. The author shows that the relation of continuous voyage and blockade to the British doctrine of retaliation remained unsettled when the United States entered the World War. He also shows that the belligerents attempted to stretch for their temporary advantage other accepted doctrines. Probably not all would agree with Dr. Briggs' conclusion, in which he says, "To the writer there appears no solution short of a rule of international law forbidding neutrals to trade at all with any belligerent. And such a rule would be contingent upon the development of an international civic sense, or feeling of mutual obligation on the part of nations to refrain from trading with belligerents—a feeling which does not now exist. Otherwise, the doctrine of continuous voyage will in the future play havoc with neutral rights when the belligerents are the big powers, and it will remain quiescent when the belligerents are the smaller nations and the powers are neutral." The division of the bibliography into "primary sources" and "secondary accounts" seems arbitrarily made, and in a work of this scope a more extended index would be acceptable.

The American Foundation maintaining the American Peace Award has published a booklet on *International Law and International Relations*

(pp. viii, 201) prepared by Elizabeth F. Read. The purpose is to give the average citizen a simple and intelligible statement of the most generally recognized principles of international law and the tendencies of international relations. Part I deals with the rights and duties of a sovereign state under international law, including an explanation of international law and its sources; Part II discusses the procedure for enforcing the rights of sovereign states (1) by peaceful measures and (2) by forcible measures; Part III is devoted to international organization, especially international unions, commissions, and the League of Nations; while Part IV treats of recent tendencies in international relations, with emphasis on the reduction of armaments, judicial settlement, and the codification of international law. The book should be very useful to the person who desires a simple, non-technical exposition of this vital subject.

It is a great pity that Mr. W. A. J. Archbold, who has had a wide experience in Indian universities, did not see fit to include in *Outlines of Indian Constitutional History, British Period* (P. S. King and Son, pp. 367) something other than a bare documentary outline of the Montagu-Chelmsford Report and the British India Act of 1919. He has treated the older material historically, though with huge gaps. The only value of the present volume lies in bringing together the older material to be found in the Oxford History and in Sir Courtenay Ilbert's work with the modern documents and an extensive but by no means complete bibliography. A postscript of one page suggests the inadequacy of the existing system and some lines of possible development. A book on contemporary Indian constitutional development is very badly required which will give some idea of the actual working of dyarchy in the provinces and of the relations between the central government and the provinces, as well as with the native states. Perhaps the provisional character of the present arrangement is so apparent as to discourage any but journalistic treatment. It remains a fact that a book like the present volume throws absolutely no light on contemporary questions.

Miller McClintock's *Street Traffic Control* (McGraw-Hill Book Company, pp. xi, 233) is the first thorough study of one of the most perplexing problems which confront large cities. As the result of a first-hand investigation in a number of cities, the author gives a detailed analysis of the origin and growth of the street traffic problem and the causes of congestion, after which he summarizes the experience of the greater

American cities and the conclusions of the foremost experts as to the most practicable methods for improving conditions. There is also a chapter on the traffic survey. The methods of traffic control are discussed under the headings of replanning the street system for traffic relief, minor and local changes to increase the street capacity, regulation of moving traffic, regulation of traffic moving on conflicting routes, regulation of the standing vehicle, regulation of pedestrians, municipal traffic codes, the traffic bureau, police equipment and auxiliary devices such as traffic signals, and the treatment of offenders, including the traffic court. Mr. McClintock has become one of the leading authorities on traffic problems, has served as consultant to the Los Angeles Traffic Commission, and is now engaged in a survey in Chicago. Through his efforts, a bureau of research in this field has been established at one of the larger American universities.

The report which Professor Leonard D. White made to the Chicago City Council on *Conditions of Municipal Employment in Chicago: A Study in Morale* (pp. 114) has been published by the city clerk. Space does not permit us to give all of Mr. White's conclusions and recommendations, but among the most important findings are: (1) The morale of the city service in general is not at as high a level as is desirable or easily attainable, although many offices are maintained with a high degree of achievement. (2) The causes for low morale where it exists are lack of stimuli or incentives and the prevalence of political influences. The author recommends: (1) that a systematic method of granting recognition for meritorious work be set up, to include such devices as annual competition for prizes, newspaper and other publicity, etc.; (2) that periodic exhibits of the work of the various departments be held; (3) that changes in organization and methods be made in order to encourage morale, such as frequent conferences between department heads and their responsible subordinates, the establishment of an employees' committee for developing coöperation and handling grievances, social gatherings, and so on; (4) that a constructive program be undertaken by the civil service commission, including a reclassification of the service, improvement of efficiency records, enlarging opportunities for promotion, etc.; and (5) that the mayor assume active leadership in carrying through a program to improve morale in the public service. This report should be read by anyone interested in problems of municipal employment.

An Outline of the Law of Municipal Corporations (pp. xxvi, 240) and *A Selection of Cases on the Law of Municipal Corporations* (pp. 250) by

Professor Allen B. Flouton, of the Brooklyn Law School, are brief treatises on this branch of law as it exists in New York State at the present time. The law of municipal corporations varies so widely in the different states that it is extremely helpful to have a carefully prepared work which is confined to a statement of the principles and the leading cases in a single state, especially a state where the municipality has reached its most complex form. Considerable attention is given to the New York home rule law, and a copy of the decision as to the constitutionality of this statute and of the amendment under which it was enacted is included. Although intended primarily for students and practitioners of law, these books are equally valuable for students of municipal government.

Students of municipal administration will find the first half of William Travis Howard's *Public Health Administration and the Natural History of Disease in Baltimore, Maryland, 1797–1920* (Carnegie Institution of Washington, pp. vi, 565) of great value. Beginning with a presentation of physical and sociological data concerning Baltimore (pp. 31), the author devotes six chapters to ideas underlying the public health laws of the city, the evolution of the actual local ordinances, regulations, and state laws on the subject, and present-day public health administration. The second half of the book is more technical and of chief interest to the health officer and the medical profession.

The Williams and Wilkins Company has published a manual on *Public Health Law* (pp. xviii, 304) by James A. Tobey which not only is indispensable to the public health worker, but should also be of interest to students in constitutional law and in state and local government. The latter group of readers will find the chapters on "Public Health and the Law," "The Sources of Public Health Law," "The Police Power and the Public Health," "State Health Departments," and "Local Health Departments" especially useful. In fact, the whole book, which is written in a clear and non-technical manner, is a distinct contribution and is valuable as a handbook on administration as well as on public health law. There is a selected bibliography, and a table of over 500 cases arranged by states for ready reference.

The legislative bureau of the Indiana Library and Historical Department issues two publications of general interest on governmental matters in that state. The *Year Book of the State of Indiana* (1925, pp. 1222) gives a summary of the official reports of state offices, boards, and institu-

tions, except the educational, benevolent, and correctional institutions. *The Statistical Report* (1926, pp. 200) includes rosters of state and local officers and statistics as to state and local finances, mortgages, highways, and elections.

The Harvard University Press has published a three-volume work on *Mr. Secretary Walsingham and the Policy of Queen Elizabeth* by Conyers Read (pp. xi, 443; 433; 505). These volumes, the author explains, are "something more than a biography of Walsingham and something less than a history of Elizabethan policy." Walsingham's private life possesses small interest and he has left no records outside the state papers, but he "stood at the very center of the royal administration and for seventeen years was the most active agent of the Queen in every department of state except those of justice and finance." Religion and foreign affairs, at a time when these were inseparable, and all matters of general policy passed through his hands, so that his career becomes a not inconsiderable section of English history. All this Dr. Read has studied in great detail with a patient mastery of the large and complicated body of sources and with the sure touch of the mature historian. His work will be indispensable to all students of the period, a monument of thorough research and an honor to American scholarship.

(C. H. H.)

Etudes de Droit Anglais: *La Conception Anglaise de la Saisine du xii^e^ au xiv^e^ Siècle* (Jouve, pp. 488), by F. Joüon des Longrais, possesses interest for students of comparative jurisprudence as well as for those concerned with the history of the common law, since it treats one of the most characteristic institutions of English law with due reference to the Roman and Continental background. In the author's view, the English conception of seisin arises, not from the influence of the Roman *possessio*, but as a direct outgrowth of the possessory assizes of Henry II, and had originally a definite political purpose in relation to the power of the feudal lords and the new remedies for the protection of possessory rights. This thesis is developed in solid fashion, though somewhat too systematically, with full use of contemporary and modern authorities. The author is well equipped for the further studies which he promises in this field.

Studies in the Period of Baronial Reform and Rebellion, 1258–1267, by E. F. Jacob (Oxford University Press, pp. xvi, 443), is Number XIV in the Oxford Studies in Social and Legal History. It contains two

sketches of social and administrative conditions during the baronial movement. One picture is of some of the local effects of the Provisions of Oxford. The other shows the after effects of the rebellion of De Montfort. The material for the study is taken largely from the judicial records of the time.

The Laws of the Kings of England from Edmund to Henry I (Cambridge, at the University Press, pp. xiii, 426), edited by A. J. Robertson, continues the previous *Laws of the Earliest English Kings* to Henry I, and includes the so-called *Leis Willelme*. It contains texts, translations, and very full notes and indices, making an extremely useful volume for the student of English constitutional history.

The Roman Colonate: The Theories of Its Origin, by R. Clausing, with an introduction by Vladimir G. Simkhovitch (Columbia University Studies in Political Science, pp. 333), contains a detailed and fairly dispassionate review of the theories of the Roman colonate since the days of Cujas and Godefroi, which is unquestionably very useful. The author then restates Professor Simkhovitch's theory of soil exhaustion as being the basic factor in the formation of the colonate. One can hardly say, however, that the doctrine in its new formulation seems any less one-sided or any better in agreement with the facts than before.

(R. P. B.)

So logical in form and clear in expression that every page counts, *Précis Élémentaire de Droit Pénal et de Procedure Pénale*, by J. A. Roux (Sirey, Paris, pp. 425), is not only a manual for students of French criminal law and procedure, but as well a suggestive philosophical treatise on penal legislation.

M. Louis Josserand, of the Faculty of Law at Lyon, has completed the seventh edition of *Précis Élémentaire des Voies d'Éxécution* (Sirey, Paris, pp. 400). This is the standard work, originally by Garsonnet, which, through repeated revisions, Dean Josserand has made his own. Within the obvious limits of a summary exposition of technical remedies prepared for the use of students of French law, the book is a model.

The Road to Peace, by Herman Bernstein (Frank-Maurice, pp. 245), is composed mainly of summaries of interviews by the author with leaders, in many fields of endeavor, in Europe and the United States. These interviews are necessarily short and very general. Topics discussed vary greatly with the persons interviewed, but center largely

around present threats to world peace and the probable effectiveness of recent proposals and developments in averting future war.

The Origin of the Next War, by John Bakeless (The Viking Press, pp. 318), is a temperate exposition of sore spots in international politics which, read as a sequel to such a classic as Upton's *Military Policy of the United States*, would do much to make it unnecessary for those Americans who were slaughtered in 1917–18 because we did not then believe in preparedness to rise from their graves in order that the moral of their sacrifice might be driven home. (G. H. M.)

The Other Side of the Medal, by Edward Thompson (Harcourt, Brace and Company, pp. viii, 142), is a book whose publication, according to the author, has been long suppressed because of the fear that it would stir up bitter feelings. It is an attempt to present the Delhi Mutiny from the point of view of the Indian, as a series of horrors and tortures for the native, in place of the usual picture of the valor and bravery of the British soldiers. In the opinion of the author, the memories of the Mutiny are one of the two main roots of Indian "irreconcilability."

After reading *The New Baltic States and Their Future*, by Owen Rutter (Houghton Mifflin Company, pp. 274), we are very glad that the author, an English gentleman of scholarly attainments, became so anxious to get first-hand information about these countries that he went to see and investigate them. Apparently the drastic agrarian reforms have not greatly upset the agricultural welfare of the countries and the peasants are taking hold splendidly. Country life, as it is herein shown, seems to be prosperous and pleasant in spite of the hard work, but the cities appear to be backward and rather uncomfortable places of sojourn. Although Mr. Rutter is primarily interested in economic conditions, he does not neglect the questions of language and national culture. He rejoices, along with the Lithuanians, Letts, and Estonians, that the separate languages are once more flourishing. But why do people rejoice to have nearly forgotten tongues revived when everyone knows there are too many already? At present, it is true, the Baltic farmers have not the cash to spend for radios. But when they do have it, and then find that they can understand but one broadcasting station, what of the consequences? This is a question that Mr. Rutter did not consider.

Italy, the Central Problem of the Mediterranean, by Count Antonio Cippico (Yale University Press, pp. xi, 110), comprises six lectures given during the 1925 sessions of the Institute of Politics at Williamstown.

Its chief purpose is to show the anomalous position now occupied by Italy, which has become a great nation, but has a superabundant population and is dependent for its existence upon the maintenance of free communications in the Mediterranean. History is invoked to show how this control over communications, by the possession of which alone can Italy be really free, together with the ownership of the better lands for colonial purposes, has been placed in the hands especially of Great Britain and France. The last two lectures are devoted to a sketch of the development of Fascismo and to a moderate statement of its aims in making Italy a strong and well-organized unity.

Although Knowlton Mixer, the author of *Porto Rico, History and Conditions, Economic, Political and Social* (The Macmillan Company, pp. 329), does not claim "for this small volume that it completely covers the subject even in condensed form," we cannot think of a field he does not at least mention. For one who wishes more information than is in this book there is an excellent bibliography to serve as guide. The book is written in a clear and simple style and the author has no particular thesis to force upon the reader.

Two recent high-school texts dealing with somewhat the same subjects, but employing different methods, are *Economics for Citizenship*, by W. D. Moriarty (Longmans, Green and Company, pp. vii, 544), and *Practical Social Science*, by John A. Lapp (Macmillan, pp. ix, 371). The former book is confined to economics and follows the traditional method of presentation. Dr. Lapp's book includes problems of government and sociology as well and is described as "a laboratory textbook." Instead of giving a connected narrative, the author sets forth important facts, figures, tables, and other data derived largely from government reports. The student is then asked certain questions which are to be answered by the study and analysis of this data, the whole purpose being to develop independent judgment, discrimination in the use of social information, and the power of analysis, and to arouse the interest of the student. Mr. Lapp has worked out a very interesting plan for using the "problem method" of instruction in high-school classes.

RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLARENCE A. BERDAHL
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AMERICAN GOVERNMENT AND PUBLIC LAW

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